

09:24:55 1  
09:24:55  
09:24:55 2 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
09:24:55  
09:24:55 3 FOR THE COUNTY OF SAN DIEGO  
09:24:55  
09:24:55 4  
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09:24:55 5 - - - - -  
09:24:55 )  
09:24:55 6 Coordination Proceeding ) JCCP No. 4042  
09:24:55 Special Title (Rule 1550 (b)) )  
09:24:55 7 ) DEPOSITION OF  
09:24:55 In re TOBACCO CASES II )  
09:24:55 8 ) RICHARD CARCHMAN, PH.D.  
09:24:55 This document relates to: )  
09:24:55 9 ) VOLUME II  
09:24:55 The People of the State of )  
09:24:55 10 California, et al. v. Philip ) PAGES 199 - 451  
09:24:55 Morris, Incorporated, et al., )  
09:24:55 11 Los Angeles Superior Court )  
09:24:55 Case No. BC 194217; )  
09:24:55 12 )  
09:24:55 The People of the State of )  
09:24:55 13 California, et al. v General )  
09:24:55 Cigar Co., et al., San Francisco )  
09:24:55 14 Superior Court Case No. 996780; )  
09:24:55 )  
09:24:55 15 The People of the State of )  
09:24:55 California, et al. v. Brown & )  
09:24:55 16 Williamson, et al., San Francisco )  
09:24:55 Superior Court Case No. 996781; )  
09:24:55 17 )  
09:24:55 The People of the State of )  
09:24:55 18 California, et al. v. Tobacco )  
09:24:55 Exporters, et al., San Francisco )  
09:24:55 19 Superior Court Case No. 301631 )  
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09:24:55 22 TAKEN ON: Friday, June 2, 2000

09:24:55 23 TAKEN AT: 550 West C Street, Suite 1440  
09:24:55 San Diego, California

09:24:55 24 REPORTED BY: Margaret A. Smith  
09:24:55 25 CSR No. 9733

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28

Vail, Christians & Associates (619)544-8344

199

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09:24:55 28  
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09:24:55 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

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Vail, Christians & Associates (619)544-8344 202

09:24:55 1 San Diego, California; Friday, June 2, 2000; 9:26 a.m.

09:24:55 2

09:25:43 3 VIDEOGRAPHER: Good morning. We are on the

09:25:45 4 record. This is the videotaped deposition of Richard

09:25:50 5 Carchman, Ph.D., Volume II. It's in re Tobacco Cases II,

09:25:58 6 case JCCP 4042, being held at Vail, Christians and

09:26:03 7 Associates, 550 West C Street, Suite 1440, in San Diego.

09:26:10 8 Today's date is Friday, June 2nd, 2000. The

09:26:14 9 time is 9:26 a.m.

09:26:16 10 The certified shorthand reporter today is

09:26:21 11 Maggie Smith with Vail, Christians.

09:26:28 12 And if counsel would again please state their

09:26:31 13 appearances, the reporter will swear in the witness.

09:26:33 14 MR. STONE: Gregory Stone on behalf of Philip

09:26:37 15 Morris, Incorporated.

09:26:40 16 MR. HOLTSMANN: John Holtmann, Philip Morris.

09:26:43 17 MR. LENDRUM: Jeff Lendrum on behalf of

09:26:45 18 Liggett Group.

09:26:47 19 MR. RICHARDSON: Tony Richardson on behalf of

09:26:48 20 Brown and Williamson.

09:26:49 21 MR. McGUIRE: Mickey McGuire, on behalf of

09:26:55 22 plaintiffs.

09:26:55 23

09:26:55 24 RICHARD CARCHMAN, Ph.D.,

09:26:55 25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

09:26:55 26

09:26:55 27 EXAMINATION

09:26:58 28 BY MR. McGUIRE:

Vail, Christians & Associates (619)544-8344 203

09:26:58 1 Q Let me ask you a few direct questions before

09:27:10 2 we go to some documents.

09:27:13 3 Is there a scientific controversy about ETS

09:27:17 4 and its ability to cause lung cancer --

09:27:19 5 MR. STONE: Objection.

09:27:20 6 BY MR. McGUIRE:

09:27:20 7 Q -- in nonsmokers?

09:27:22 8 MR. STONE: Objection; vague and ambiguous

09:27:23 9 with respect to the phrase "scientific controversy."  
09:27:27 10 Vague and ambiguous with respect to the concept or term  
09:27:31 11 "ability to cause." Improperly calls for opinion  
09:27:37 12 testimony.  
09:27:37 13 You can answer.  
09:27:40 14 THE WITNESS: I wouldn't answer it with  
09:27:41 15 regard to scientific controversy. I would answer it by  
09:27:44 16 saying that there are scientists who have expressed  
09:27:47 17 opinions that they are unsure as to whether the  
09:27:51 18 epidemiological data would support a causal inference, for  
09:27:57 19 example.  
09:27:57 20 BY MR. McGUIRE:  
09:27:57 21 Q Have -- has Philip Morris ever stated that  
09:28:03 22 there is a scientific controversy about ETS and its  
09:28:06 23 ability to cause lung cancer in nonsmokers?  
09:28:10 24 MR. STONE: Objection; lacks foundation,  
09:28:12 25 calls for speculation, vague and ambiguous with respect to  
09:28:15 26 the concept of Philip Morris stating something.  
09:28:18 27 You may answer.  
09:28:19 28 THE WITNESS: I can't respond as to whether  
Vail, Christians & Associates (619)544-8344 204  
09:28:22 1 anybody in Philip Morris has ever said -- used that phrase  
09:28:27 2 or not. All I can tell you is that within the group of  
09:28:30 3 scientists that I have interacted with over the years at  
09:28:33 4 Philip Morris, we don't discuss ETS and the alleged health  
09:28:39 5 effects using -- generally using the word "controversy."  
09:28:43 6 Somebody may have, but, generally, the discussion revolves  
09:28:47 7 around the actual scientific facts, whether they're  
09:28:51 8 consistent or not consistent.  
09:28:53 9 BY MR. McGUIRE:  
09:28:53 10 Q Have you ever stated that there is a  
09:28:56 11 controversy?  
09:28:57 12 A I may have.  
09:28:58 13 Q Have you changed your mind?  
09:29:01 14 MR. STONE: Objection; assumes facts not in  
09:29:02 15 evidence, improper as to form, lacks foundation.  
09:29:07 16 THE WITNESS: Within the context as I have  
09:29:09 17 tried to answer your other question about controversy. If  
09:29:15 18 by that you mean do I still believe there are people out  
09:29:18 19 there that do not feel that based on the scientific  
09:29:23 20 evidence, that one can draw a causal inference, I would  
09:29:26 21 say yes and yes for myself as well.  
09:29:28 22 BY MR. McGUIRE:  
09:29:28 23 Q Have you ever stated under oath, appearing on  
09:29:46 24 behalf of Philip Morris, that there is a controversy --  
09:29:50 25 scientific controversy about ETS and its ability to cause  
09:29:54 26 lung cancer in humans?  
09:29:56 27 MR. STONE: Objection; improper as to form,  
09:29:58 28 lacks foundation, calls for speculation, overbroad.  
Vail, Christians & Associates (619)544-8344 205  
09:30:00 1 You can answer to the best of your  
09:30:02 2 recollection.  
09:30:02 3 THE WITNESS: I thought I have answered it  
09:30:06 4 when you asked me that question, I thought, just the same  
09:30:09 5 question a moment ago. And I think my answer was I may  
09:30:13 6 have.  
09:30:14 7 BY MR. McGUIRE:  
09:30:14 8 Q Is it true that not one American has  
09:30:17 9 developed lung cancer as a result of being exposed to  
09:30:20 10 environmental tobacco smoke?  
09:30:23 11 MR. STONE: Objection; improperly calls for  
09:30:25 12 opinion testimony, lacks foundation, assumes facts not in  
09:30:29 13 evidence, calls for speculation.

09:30:32 14 You can answer as best you can.  
09:30:34 15 THE WITNESS: I don't believe there is any  
09:30:37 16 way to scientifically answer that question, for me.  
09:30:41 17 BY MR. McGUIRE:  
09:30:41 18 Q Has Philip Morris ever stated that?  
09:30:45 19 MR. STONE: Same objections.  
09:30:49 20 THE WITNESS: I have no idea within the  
09:30:51 21 context of the word "ever" whether anybody at Philip  
09:30:55 22 Morris has ever stated anything like that or anything that  
09:30:58 23 could be construed like that. So I can't answer that  
09:31:01 24 question.  
09:31:01 25 BY MR. McGUIRE:  
09:31:01 26 Q Does Philip Morris believe that smoking is  
09:31:08 27 injurious to nonsmokers?  
09:31:10 28 MR. STONE: I'm going to object on the  
Vail, Christians & Associates (619)544-8344 206  
09:31:12 1 grounds that the question is overbroad. It's improper as  
09:31:14 2 to form, calls for speculation. It also assumes facts  
09:31:19 3 that are inconsistent with legal reality; namely, that a  
09:31:24 4 corporation can have a belief.  
09:31:27 5 You can answer as best you can.  
09:31:29 6 BY MR. McGUIRE:  
09:31:29 7 Q Let me restate the question, asking you as  
09:31:31 8 the person most knowledgeable from Philip Morris.  
09:31:34 9 Is smoking injurious to nonsmokers?  
09:31:39 10 MR. STONE: This was asked and answered in  
09:31:41 11 yesterday's deposition on several occasions. The question  
09:31:43 12 is harassing. If you have questions you want to put to  
09:31:46 13 the witness that you haven't already put to him, let's  
09:31:49 14 cover those. Let's not rehash grounds. If you're just  
09:31:53 15 trying to delay this, that would certainly be an improper  
09:31:56 16 use of the deposition.  
09:31:57 17 You can answer this question again,  
09:32:00 18 Dr. Carchman, but I will not let continued efforts to  
09:32:03 19 repeat yesterday's questioning go on.  
09:32:06 20 THE WITNESS: I thought I answered it. It  
09:32:08 21 was one of the first questions that was asked of me by  
09:32:10 22 Mr. McGuire.  
09:32:12 23 BY MR. McGUIRE:  
09:32:12 24 Q Maybe you're wrong.  
09:32:16 25 So would you answer again, as your counsel  
09:32:18 26 requested you to.  
09:32:19 27 A I don't think I'm wrong. You asked me if I  
09:32:22 28 felt there was any adverse health effects associated with  
Vail, Christians & Associates (619)544-8344 207  
09:32:26 1 ETS exposure, and I went through a list of, I think, two  
09:32:30 2 or three things very early on. My recollection on that is  
09:32:36 3 very clear.  
09:32:36 4 Q And the question now is, is it injurious?  
09:32:41 5 MR. STONE: Is that different than adverse  
09:32:42 6 health effects?  
09:32:43 7 MR. McGUIRE: It may be.  
09:32:44 8 MR. STONE: Then you tell us how it's  
09:32:46 9 different.  
09:32:46 10 MR. McGUIRE: I'm not being deposed here.  
09:32:48 11 You've told him to answer the question.  
09:32:49 12 MR. STONE: I'm going to -- based on the  
09:32:51 13 witness's clear recollection that it's asked and answered  
09:32:52 14 and on your refusal to explain how the question is any  
09:32:56 15 different from the preceding one, I'm not going to  
09:32:58 16 instruct him to continue to answer questions that he  
09:33:00 17 clearly perceives as being harassing.  
09:33:03 18 MR. McGUIRE: Did you say you're not going to

09:33:04 19 instruct him, or you are going to instruct him not to  
09:33:07 20 answer?

09:33:07 21 MR. STONE: I said I'm not going to instruct  
09:33:09 22 him to continue to answer questions. He's told you he's  
09:33:12 23 already answered the question.

09:33:13 24 BY MR. McGUIRE:

09:33:13 25 Q Answer the question, sir.

09:33:14 26 MR. STONE: He told you he already answered  
09:33:16 27 it. Put your next question.

09:33:17 28 MR. McGUIRE: Are you instructing him not to  
Vail, Christians & Associates (619)544-8344 208

09:33:19 1 answer?

09:33:20 2 MR. STONE: No. He answered it.

09:33:20 3 MR. McGUIRE: Okay. As far as I'm concerned,  
09:33:27 4 we'll have to go see the judge.

09:33:29 5 MR. STONE: Fine.

09:33:29 6 MR. McGUIRE: So -- well, what I'll do is  
09:33:34 7 I'll mark this question as well as some of the other ones  
09:33:36 8 you instructed on yesterday, even though you claim not to  
09:33:39 9 be instructing him, he apparently is not going to answer.  
09:33:44 10 You continue to answer, you continue to obstruct the  
09:33:47 11 proceedings, and that's not, as you know, appropriate or  
09:33:52 12 proper.

09:33:53 13 BY MR. McGUIRE:

09:33:53 14 Q I'm going to ask you one more time, sir.  
09:33:56 15 Is smoking injurious to the health of  
09:33:59 16 nonsmokers?

09:33:59 17 MR. STONE: Dr. Carchman, you can explain to  
09:34:02 18 Mr. McGuire again, if you like, that you answered that  
09:34:06 19 question at length yesterday. You can answer the question  
09:34:08 20 in any fashion you deem appropriate. The question is  
09:34:10 21 asked and answered. It's also vague and ambiguous,  
09:34:12 22 improperly calls for opinion testimony.

09:34:14 23 MR. MILES: Okay. I'll be joining in the  
09:34:16 24 objection. I also think it's an incomplete hypothetical  
09:34:20 25 and assumes facts.

09:34:23 26 THE WITNESS: I stand by my clear  
09:34:26 27 recollection that that question was asked early on in the  
09:34:30 28 deposition yesterday, and I provided a complete answer to  
Vail, Christians & Associates (619)544-8344 209

09:34:34 1 it.

09:34:34 2 BY MR. McGUIRE:

09:34:34 3 Q I understand, sir. But unless a judge rules  
09:34:38 4 that this is cumulative and somehow is going to delay the  
09:34:42 5 proceedings, it's not unusual for a witness to be asked to  
09:34:47 6 answer a question a second time.

09:34:48 7 So if you refuse to go further, tell me.  
09:34:52 8 Otherwise, your counsel has made objection. I've phrased  
09:34:55 9 the question. I'd appreciate a "yes" or a "no."

09:34:58 10 MR. STONE: Mr. McGuire, he's answered the  
09:35:00 11 question as he deems appropriate. If you think his answer  
09:35:02 12 is inadequate, you know the remedies available to you.

09:35:05 13 MR. McGUIRE: Yes. And I will follow those  
09:35:07 14 remedies or proceed against them.

09:35:09 15 MR. STONE: Let's adjourn now and go do it.  
09:35:11 16 Otherwise, you're waiving any claim that there's anything  
09:35:14 17 improper if you don't take your steps now.

09:35:16 18 MR. McGUIRE: I'll see you in court on that  
09:35:20 19 one.

09:35:20 20 BY MR. McGUIRE:

09:35:20 21 Q We accept an interest in public health as a  
09:35:24 22 basic responsibility paramount to every other  
09:35:27 23 consideration in our business.

09:35:27 24 Is that a goal that Philip Morris -- or a  
09:35:37 25 mission statement that Philip Morris has adopted?  
09:35:40 26 A You are reciting from a 1954 advertisement,  
09:35:44 27 paper advertisement in which Philip Morris was a party to,  
09:35:50 28 I believe, if you're referring to the Frank statement.  
Vail, Christians & Associates (619)544-8344 210

09:35:53 1 Q Yes.  
09:35:55 2 A That statement, as expressed in that  
09:35:58 3 advertisement in 1954, which is, I think, one sentence  
09:36:05 4 taken from a much larger -- much larger document, I think  
09:36:12 5 was an expression at that time of those people who signed  
09:36:14 6 it for the companies they represented.  
09:36:17 7 Q Does it no longer represent the mission  
09:36:22 8 statement of Philip Morris?  
09:36:23 9 MR. STONE: Objection; vague and ambiguous  
09:36:25 10 with respect to the phrase "mission statement." Lacks  
09:36:27 11 foundation, beyond the scope in which this witness has  
09:36:29 12 been designated to testify.  
09:36:31 13 You can answer.  
09:36:36 14 THE WITNESS: Oh. Thank you.  
09:36:37 15 When you asked me yesterday about the mission  
09:36:42 16 statement for Philip Morris, I indicated that there had  
09:36:45 17 been several and a more recent one, but I could not recall  
09:36:50 18 then, nor can I recall now what the specific mission --  
09:36:55 19 mission statement currently is.  
09:36:57 20 In toto, I have a recollection of some parts  
09:37:06 21 of it, but not in -- not in toto.  
09:37:12 22 BY MR. McGUIRE:  
09:37:12 23 Q The question again is, is that statement no  
09:37:27 24 longer representative of the mission statement of Philip  
09:37:30 25 Morris?  
09:37:31 26 MR. STONE: Objection; asked and answered,  
09:37:34 27 outside the scope on which this witness has been  
09:37:37 28 designated to testify, lacks foundation, vague and  
Vail, Christians & Associates (619)544-8344 211

09:37:39 1 ambiguous and overbroad.  
09:37:41 2 You can answer as best you can.  
09:37:43 3 THE WITNESS: Again, since -- since I can't  
09:37:45 4 remember, nor do I have in front of me the current mission  
09:37:50 5 statement, I cannot answer your question either "yes" or  
09:37:53 6 "no."  
09:37:54 7 BY MR. McGUIRE:  
09:37:54 8 Q Has Philip Morris ever acted contrary to the  
09:37:59 9 1956 Frank statement?  
09:38:01 10 MR. STONE: Objection; assumes facts not in  
09:38:02 11 evidence, lacks foundation, calls for speculation,  
09:38:06 12 overbroad, beyond this witness's area of personal  
09:38:09 13 experience, outside the area in which this witness has  
09:38:12 14 been designated to testify, improperly calls for opinion  
09:38:16 15 testimony.  
09:38:18 16 THE WITNESS: If you don't mind, Mr. McGuire,  
09:38:21 17 could you repeat your question.  
09:38:22 18 BY MR. McGUIRE:  
09:38:22 19 Q Is that statement no longer representative of  
09:38:31 20 the mission statement of Philip Morris? We went past  
09:38:34 21 that. I asked has Philip Morris ever acted contrary to  
09:38:38 22 the 1956 Frank statement?  
09:38:40 23 MR. STONE: Same objections.  
09:38:43 24 THE WITNESS: Just a minor correction. It's  
09:38:45 25 the 1954 --  
09:38:47 26 BY MR. McGUIRE:  
09:38:47 27 Q Thank you.  
09:38:48 28 A You're quite -- you're quite welcome.



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09:38:54 1 And I don't know if looking at one sentence  
 09:38:56 2 from an entire statement I could reflect back and give you  
 09:39:01 3 a complete -- a complete answer. I've never thought about  
 09:39:07 4 it in that context. I've only thought about it within the  
 09:39:10 5 context of the entire -- of the entire document. And  
 09:39:14 6 there are things in that document that were true in 1954  
 09:39:17 7 that are no longer true today.

09:39:20 8 So to ask me about one sentence from an  
 09:39:26 9 entire document and to reflect on that with regard to the  
 09:39:30 10 company's behavior in the ensuing 46 years, I don't think  
 09:39:35 11 I can -- I could answer a question like that.

09:39:37 12 Q You don't think you can, or you can't?  
 09:39:43 13 A I can't.

09:39:43 14 Q Is it true that Philip Morris carries out ETS  
 09:39:48 15 research and reviews scientific literature in order to  
 09:39:50 16 keep the controversy alive?

09:39:52 17 MR. STONE: Objection; asked and answered  
 09:39:53 18 yesterday, vague and ambiguous, lacks foundation, calls  
 09:39:58 19 for speculation.

09:40:02 20 THE WITNESS: Over the time that I was  
 09:40:03 21 responsible for the company's efforts in ETS, that was  
 09:40:11 22 never part of our objectives or mission.

09:40:12 23 BY MR. McGUIRE:

09:40:12 24 Q Was it the -- was it part of your objectives  
 09:40:23 25 or mission at the time that you took over that  
 09:40:26 26 responsibility?

09:40:27 27 MR. STONE: Same objections.

09:40:29 28 THE WITNESS: No.

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09:40:30 1 BY MR. McGUIRE:

09:40:30 2 Q Was it ever stated in any documents that you  
 09:40:32 3 reviewed at the time you took over that responsibility  
 09:40:35 4 that your mission would be to keep the controversy  
 09:40:38 5 regarding ETS alive?

09:40:39 6 MR. STONE: Same objections.

09:40:40 7 THE WITNESS: No.

09:40:41 8 BY MR. McGUIRE:

09:40:41 9 Q Does Philip Morris use a strategy to defend  
 09:40:50 10 itself on three major fronts, including litigation,  
 09:40:53 11 politics, and public opinion?

09:40:55 12 MR. STONE: Mr. McGuire, I don't think that's  
 09:40:56 13 anywhere within the scope of the topics on which you've  
 09:40:59 14 asked the witness to be designated to testify for Philip  
 09:41:02 15 Morris.

09:41:03 16 If you'd like to show me how you think it is,  
 09:41:05 17 I'll consider whether we can continue this line of  
 09:41:08 18 questioning.

09:41:08 19 MR. McGUIRE: Is he here to answer questions  
 09:41:10 20 about ETS and Philip Morris' position on ETS?

09:41:14 21 MR. STONE: He's here to answer questions  
 09:41:15 22 outlined, subject to our objections, in requests 1, 2, and  
 09:41:19 23 10 of your notice of deposition.

09:41:20 24 MR. McGUIRE: And he's not here to answer  
 09:41:23 25 questions subject to the renote; is that right?

09:41:28 26 MR. STONE: What's different between the  
 09:41:29 27 renote and the original notice?

09:41:31 28 MR. McGUIRE: It says we want to talk to the

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09:41:32 1 person who can answer questions regarding ETS, its  
 09:41:35 2 relationship to disease, and the basis of it.

09:41:39 3 MR. STONE: Which request is that in the  
 09:41:42 4 renote?

09:41:42 5 MR. McGUIRE: 1.

09:41:43 6 MR. STONE: Do you mean the renote is

09:41:45 7 different than the original notice?

09:41:46 8 MR. McGUIRE: Well, it's supplemental to it.

09:41:49 9 MR. STONE: Oh, you mean the supplemental?

09:41:51 10 MR. McGUIRE: Yes. I'm sorry. Yes.

09:41:52 11 MR. STONE: Well, as I told you yesterday,

09:41:54 12 he'll answer questions on the supplemental, although the

09:41:58 13 request was untimely. He'll answer with request

09:42:02 14 No. 1. But what does this have to do with request No. 1

09:42:05 15 in the supplemental?

09:42:06 16 MR. McGUIRE: I think it relates to it.

09:42:07 17 MR. STONE: Philip Morris' position on ETS

09:42:10 18 and its relationship to disease has something to do with a

09:42:13 19 question which was, if I can go back to it, does Philip

09:42:21 20 Morris use a strategy to defend itself on three major

09:42:24 21 fronts, including litigation, politics, and public

09:42:27 22 opinion?

09:42:27 23 MR. McGUIRE: Yes.

09:42:27 24 MR. STONE: That has something to do with the

09:42:29 25 relationship between disease and ETS?

09:42:31 26 MR. McGUIRE: Yes. And I'll add to it as

09:42:34 27 that relates to environmental tobacco smoke.

09:42:36 28 MR. STONE: As what relates to environmental  
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09:42:39 1 tobacco smoke?

09:42:39 2 MR. McGUIRE: My question.

09:42:40 3 MR. STONE: I don't understand the question.

09:42:41 4 Rephrase the question. Let's try to get to the heart of

09:42:44 5 this.

09:42:44 6 MR. McGUIRE: Okay.

09:42:45 7 BY MR. McGUIRE:

09:42:45 8 Q Does Philip Morris adopt a strategy -- or has

09:42:48 9 Philip Morris adopted a strategy currently that will

09:42:51 10 defend itself in ETS lawsuits by using litigation,

09:42:55 11 politics, and public opinion?

09:42:58 12 MR. STONE: Compound.

09:43:00 13 I'm going to instruct the witness not to

09:43:02 14 answer on that ground. You can frame a proper question.

09:43:06 15 BY MR. McGUIRE:

09:43:06 16 Q Does Philip Morris -- has Philip Morris

09:43:10 17 adopted a strategy currently that it will defend itself in

09:43:13 18 ETS lawsuits by using litigation?

09:43:15 19 MR. STONE: Well, how do you defend a lawsuit

09:43:17 20 other than in litigation, Mr. McGuire? Does that make

09:43:20 21 sense to you? Does that question make sense? Do you

09:43:24 22 bring a case without litigation? Do you defend a case

09:43:27 23 without litigation? Where is the -- where is the common

09:43:30 24 sense for that question? And what does that have to do

09:43:35 25 with ETS and a relationship to disease?

09:43:36 26 MR. McGUIRE: Are you instructing him not to

09:43:38 27 answer, or are you just making a speech here?

09:43:40 28 MR. STONE: At the moment, I think I'm making  
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09:43:42 1 a speech. I'm asking you --

09:43:43 2 MR. McGUIRE: Would you shut up, please.

09:43:45 3 You're being disruptive.

09:43:46 4 MR. STONE: I'm not being disruptive.

09:43:47 5 MR. McGUIRE: Yes, you are.

09:43:48 6 MR. STONE: You show me how that relates to

09:43:49 7 one of your questions, one of your areas of inquiry.

09:43:52 8 MR. McGUIRE: That's not my job.

09:43:54 9 MR. STONE: It is your job.

09:43:55 10 MR. McGUIRE: No, it isn't.  
09:43:56 11 Are you instructing him not to answer or  
09:43:58 12 not?  
09:43:58 13 MR. STONE: No.  
09:43:59 14 MR. McGUIRE: You're not instructing him.  
09:44:00 15 BY MR. McGUIRE:  
09:44:00 16 Q Would you answer the question, please, sir,  
09:44:02 17 if you have it in mind.  
09:44:02 18 A Could you please play it back for me.  
09:44:06 19 MR. McGUIRE: Yes. Would you read it back.  
09:44:08 20 (Record read.)  
09:44:23 21 MR. STONE: Objection; nonsensical, vague and  
09:44:28 22 ambiguous, lacks foundation, calls for legal opinion  
09:44:32 23 outside this witness's area of experience.  
09:44:34 24 You can answer as best you can.  
09:44:37 25 THE WITNESS: I don't know.  
09:44:37 26 BY MR. McGUIRE:  
09:44:37 27 Q The same question regarding politics.  
09:44:40 28 MR. STONE: Same objections.  
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09:44:42 1 THE WITNESS: Same answer. I don't know.  
09:44:44 2 BY MR. McGUIRE:  
09:44:44 3 Q Same question regarding public opinion.  
09:44:47 4 MR. STONE: Same objections.  
09:44:49 5 THE WITNESS: Same answer. I don't know.  
09:44:50 6 BY MR. McGUIRE:  
09:44:50 7 Q Has Philip Morris said that this strategy is  
09:44:53 8 not one that we intend or hope will bring us victory, but  
09:44:58 9 it's a holding strategy?  
09:45:00 10 MR. STONE: What strategy?  
09:45:01 11 BY MR. McGUIRE:  
09:45:01 12 Q Defending itself in litigation using politics  
09:45:05 13 and public opinion.  
09:45:05 14 MR. STONE: Objection.  
09:45:06 15 We've dropped litigation?  
09:45:07 16 MR. McGUIRE: No. All three.  
09:45:09 17 MR. STONE: Defending itself in litigation  
09:45:11 18 using politics and public opinion?  
09:45:13 19 MR. McGUIRE: Defending itself by using  
09:45:15 20 litigation, politics, and public opinion.  
09:45:17 21 MR. STONE: Okay. Objection; compound, vague  
09:45:19 22 and ambiguous, lacks foundation, calls for opinion  
09:45:21 23 testimony in the area of legal judgments that are outside  
09:45:26 24 this witness's experience, outside the area in which this  
09:45:30 25 witness has been designated to testify.  
09:45:31 26 To the extent you can answer the question, go  
09:45:35 27 ahead.  
09:45:35 28 THE WITNESS: I don't know.  
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09:45:36 1 BY MR. McGUIRE:  
09:45:36 2 Q Have you ever been told by another employee  
09:45:41 3 of Philip Morris, senior to you, that this is a holding  
09:45:47 4 strategy consisting of creating doubt about the health  
09:45:50 5 care -- about health -- excuse me -- creating doubt about  
09:45:55 6 the health charge without actually denying it?  
09:45:57 7 MR. STONE: Same objections.  
09:46:00 8 THE WITNESS: If somebody used those words to  
09:46:03 9 me, I don't remember it. I don't think so. But I don't  
09:46:06 10 remember anybody saying that to me.  
09:46:07 11 BY MR. McGUIRE:  
09:46:07 12 Q Was it part of the global strategy that you  
09:46:11 13 were advised about in 1980 -- excuse me -- 1993?  
09:46:16 14 MR. STONE: Objection; assumes facts not in

09:46:17 15 evidence, vague and ambiguous.

09:46:21 16 THE WITNESS: I was not advised about any

09:46:23 17 global strategy in 1993.

09:46:24 18 BY MR. McGUIRE:

09:46:24 19 Q Have you ever personally stated that it's

09:46:46 20 incorrect to express levels of ETS exposure in terms of

09:46:50 21 cigarette equivalents?

09:46:52 22 A Yes.

09:46:54 23 Q When did you do that?

09:46:56 24 A On several occasions.

09:46:59 25 Q Is that still your position?

09:47:02 26 A Placed within a proper context, that if

09:47:06 27 you're going to talk about cigarette equivalents, you have

09:47:09 28 to have a broader understanding as to what the denominator

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09:47:12 1 is; that is, whether it's a gas-phased component or

09:47:17 2 particulate -- particulate component and that the only

09:47:22 3 people that should be talking about that are people versed

09:47:24 4 in the science that understand what the limitations of

09:47:31 5 such a use of the term is.

09:47:33 6 So that's the context in which I have used

09:47:35 7 it, and it's still the basis for my belief as to how and

09:47:42 8 when it should be used and in what context.

09:47:45 9 Q Is your belief, as you just expressed it,

09:47:49 10 consistent with the position on the same issue taken by

09:47:52 11 Philip Morris?

09:47:53 12 MR. STONE: Objection; lacks foundation,

09:47:54 13 assumes facts not in evidence.

09:47:57 14 THE WITNESS: I'm not sure what you're

09:47:58 15 referring to.

09:47:59 16 BY MR. McGUIRE:

09:47:59 17 Q You mean you don't understand the question?

09:48:05 18 A I guess that's correct.

09:48:09 19 Q Okay. What I'm asking you is whether your

09:48:12 20 position that you just provided us with regarding

09:48:15 21 cigarette equivalents is the same position or similar --

09:48:22 22 I'll change that to identical to the position taken by the

09:48:25 23 company?

09:48:25 24 MR. STONE: Objection; assumes facts not in

09:48:26 25 evidence; namely, that the company has taken a position on

09:48:30 26 that question. Lacks foundation.

09:48:32 27 THE WITNESS: And that's the part of the

09:48:33 28 question I don't understand, that Philip Morris has taken

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09:48:36 1 a position on that.

09:48:36 2 BY MR. McGUIRE:

09:48:36 3 Q Have they taken a position on that?

09:48:39 4 A I'm not aware of it.

09:48:41 5 Q Did you ever express the position taken on

09:48:43 6 cigarette equivalents while you were a full-time employee

09:48:46 7 of Philip Morris?

09:48:47 8 A Yes, sir.

09:48:48 9 Q Have you ever taken that position in hearings

09:48:50 10 before political bodies?

09:48:51 11 A I've never been before a political body and

09:48:55 12 been asked that question, that I can recall.

09:48:57 13 Q Have you written documents to public health

09:49:01 14 organizations, taking that position as part of a critique

09:49:05 15 of other reports that the agency is relying on?

09:49:14 16 A Which -- which agency? Any agency?

09:49:15 17 Q Yes.

09:49:16 18 A I don't believe I've taken a position one way

09:49:18 19 or another, because it was in my opinion and the

09:49:23 20 scientists within Philip Morris, it was not something we  
09:49:27 21 would use or rely on one way or another.

09:49:29 22 Q Are you familiar with the budget for R&D at  
09:49:41 23 Philip Morris for this year?

09:49:44 24 A Philip Morris USA?

09:49:46 25 Q USA.

09:49:47 26 A Generally speaking.

09:49:48 27 Q And are you familiar with the budget for  
09:49:54 28 advertising and promotion for this year?

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09:49:57 1 A No.

09:49:57 2 Q Were you ever -- did you ever know what the  
09:50:01 3 budget for advertising and promotion was?

09:50:05 4 A No.

09:50:05 5 Q Did you ever answer any questions under oath  
09:50:08 6 from attorneys representing Philip Morris where you  
09:50:11 7 expressed an opinion as to what the ratio was between the  
09:50:15 8 R&D budget and the advertising and promotion budget?

09:50:19 9 A By attorneys for Philip Morris?

09:50:23 10 Q Yes.

09:50:24 11 A Not that I remember.

09:50:25 12 Q Did you ever answer a similar question by --  
09:50:28 13 from attorneys representing plaintiffs?

09:50:30 14 A I was asked questions. I can remember at  
09:50:34 15 least on one occasion about that. Whether I actually had  
09:50:39 16 an opportunity to answer it or not, I don't remember. All  
09:50:42 17 I remember is there were probably a large series of  
09:50:45 18 objections going back and forth between -- between the  
09:50:48 19 lawyers. But I don't believe I've ever had knowledge of  
09:50:54 20 what the advertising and promotion -- promotional budget  
09:50:58 21 was for Philip Morris. So I don't believe I could have  
09:51:01 22 answered that question, lacking that information.

09:51:03 23 Q Let me see if I can refresh your memory.  
09:51:07 24 Do you recollect testifying that the R&D  
09:51:09 25 budget was one percent or less of the advertising and  
09:51:12 26 promotional budget?

09:51:14 27 A I could have.

09:51:15 28 Q Is that consistent with your memory?

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09:51:18 1 A Mr. McGuire, if I said it, I said it. I  
09:51:26 2 guess, it's in the record. As I sit here today, I can  
09:51:29 3 tell you I don't know what the advertising and promotion  
09:51:34 4 budget is for Philip Morris USA.

09:51:37 5 Q Did you at one time know that?

09:51:38 6 A I don't think so.

09:51:39 7 Q Have you ever answered any interrogatories or  
09:51:46 8 assisted in answering any interrogatories in this case?

09:51:50 9 A I think the answer is yes.

09:51:52 10 Q Do you know which ones?

09:51:54 11 A The ones that I'm responsible for here. If I  
09:52:04 12 understand your question.

09:52:04 13 Q Did you sign any interrogatory answers under  
09:52:12 14 penalty of perjury?

09:52:16 15 MR. STONE: He did not.

09:52:17 16 MR. MCGUIRE: He did not.

09:52:19 17 THE WITNESS: Thank you.

09:52:19 18 MR. MCGUIRE: Do you know if he was listed as  
09:52:21 19 a --

09:52:21 20 MR. STONE: I don't believe he was.

09:52:23 21 MR. MCGUIRE: -- preparer?

09:52:24 22 BY MR. MCGUIRE:

09:52:24 23 Q I'd like to talk now briefly or maybe not so  
09:52:30 24 briefly, depending on how these things go, with respect to

09:52:33 25 Exhibit 4017 that was identified yesterday.  
09:52:36 26 Did you have a chance to look at that  
09:52:37 27 document --  
09:52:38 28 MR. STONE: I'll object.  
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09:52:39 1 BY MR. McGUIRE:  
09:52:39 2 Q -- last evening?  
09:52:41 3 MR. STONE: I'm going to object to any use of  
09:52:43 4 Exhibit 4017 on the grounds that it's not authentic. It's  
09:52:46 5 not complete. It's not a document that appears to have  
09:52:50 6 emanated in this form from any of the parties to this  
09:52:52 7 action. It appears, from its face, as I look at it, to  
09:52:55 8 simply be somebody's transcription in part of some  
09:52:59 9 document that they are purporting to transcribe.  
09:53:02 10 So I object to it on the grounds of  
09:53:05 11 authenticity and the other grounds stated. It's also  
09:53:10 12 hearsay.  
09:53:10 13 MR. RICHARDSON: I join in those objections.  
09:53:11 14 The document appears to be authored by an employee of a  
09:53:15 15 nonparty to this action. And on that basis, as well as  
09:53:19 16 the others mentioned by Mr. Stone, I join in his  
09:53:22 17 objections.  
09:53:23 18 MR. MILES: Join.  
09:53:26 19 MR. LENDRUM: I'll join as well.  
09:53:28 20 MR. McGUIRE: How unusual.  
09:53:30 21 BY MR. McGUIRE:  
09:53:30 22 Q Now that we all joined, do you have the  
09:53:33 23 question in mind?  
09:53:34 24 A No. Please repeat.  
09:53:36 25 Q Okay. I don't know if I even had a question.  
09:53:42 26 MR. STONE: The question was have you had an  
09:53:44 27 opportunity to review Exhibit 4017, if that helps you out.  
09:53:47 28 MR. McGUIRE: Thank you.  
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09:53:48 1 MR. STONE: And can I just have my objection  
09:53:49 2 running to this line so I don't have to interrupt?  
09:53:51 3 MR. McGUIRE: Absolutely. And everybody can  
09:53:53 4 join too.  
09:53:54 5 THE WITNESS: I have briefly looked at this  
09:53:56 6 document.  
09:53:56 7 BY MR. McGUIRE:  
09:53:56 8 Q Was this -- was it last night that you looked  
09:53:59 9 at it?  
09:53:59 10 A Actually, yesterday, when you gave it to me,  
09:54:02 11 and a little bit right now.  
09:54:04 12 Q Okay. Had you seen this document ever before?  
09:54:06 13 A No.  
09:54:06 14 Q By the way, did you review any documents in  
09:54:10 15 preparation for coming here and giving testimony as a  
09:54:13 16 person most knowledgeable?  
09:54:15 17 A Specifically as it relates to this  
09:54:21 18 deposition, no. But I look at, I review papers on a daily  
09:54:30 19 basis. And some of those papers I reviewed turns out are  
09:54:33 20 relevant to some of the questions you've asked me.  
09:54:36 21 But did I specifically do it, read those  
09:54:39 22 things for this -- these answers, no. It turned out  
09:54:44 23 coincidental, in my mind, for some of the things that I  
09:54:48 24 read, they're of some value here.  
09:54:50 25 Q Okay. Have we discussed any of those things  
09:54:52 26 that you read that were of some value yesterday?  
09:54:54 27 A Yes, sir, we did.  
09:54:55 28 Q Okay. Do you know -- or have you ever met  
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09:55:01 1 any of the individuals who are listed as being present at  
09:55:04 2 this meeting?

09:55:06 3 MR. STONE: Objection; assumes facts not in  
09:55:08 4 evidence, in addition to my other objections.

09:55:11 5 THE WITNESS: Yes.

09:55:11 6 BY MR. McGUIRE:

09:55:11 7 Q Who do you know other than who you talked  
09:55:15 8 about -- we talked about yesterday? Instead of doing  
09:55:19 9 that, let me just change the question.

09:55:20 10 Who do you know?

09:55:24 11 A Thank you.

09:55:25 12 Dr. Helmut Gaisch and Dr. -- I guess the 'S'  
09:55:30 13 is Dr. Sharon Bose. And I wouldn't say I know him, but I  
09:55:36 14 have met him on at least one occasion. And that's  
09:55:39 15 Mr. Remes.

09:55:45 16 Q Do you have any information that this  
09:55:52 17 document does not accurately reflect the substance of a  
09:55:56 18 meeting that occurred on February 17, 1988?

09:56:00 19 MR. STONE: Objection; calls for speculation,  
09:56:02 20 lacks foundation. He wasn't employed by Philip Morris  
09:56:04 21 even at that time. Outside the area in which this witness  
09:56:07 22 has been designated to testify.

09:56:09 23 MR. RICHARDSON: Join in the objection.

09:56:10 24 MR. MILES: Join.

09:56:13 25 THE WITNESS: I've not seen this -- this  
09:56:15 26 document before. Though, I have heard reference --  
09:56:22 27 reference to the question you're talking about, as it  
09:56:26 28 relates to this particular document. But, as I said  
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09:56:33 1 earlier, this, in 1993, when I became responsible for ETS,  
09:56:43 2 was not part of the efforts that I was involved in from  
09:56:46 3 '93, forward, with regard to ETS.

09:56:48 4 BY MR. McGUIRE:

09:56:48 5 Q Who did you take over for, when you say "when  
09:56:54 6 I became responsible"? Who was responsible for the ETS  
09:56:59 7 efforts before you?

09:57:00 8 MR. STONE: Objection; asked and answered  
09:57:02 9 yesterday.

09:57:02 10 THE WITNESS: For a period of time, Dr. Jim  
09:57:05 11 Charles, vice-president of research.

09:57:11 12 BY MR. McGUIRE:

09:57:11 13 Q And what about before him?

09:57:15 14 MR. STONE: Objection; asked and answered.

09:57:18 15 THE WITNESS: I'm not sure. I don't -- I  
09:57:21 16 don't know. It may have been Dr. Tom Osdene, but I'm not  
09:57:25 17 sure.

09:57:25 18 BY MR. McGUIRE:

09:57:25 19 Q What were you told the global strategy  
09:57:35 20 regarding ETS was in 1993 when you became responsible for  
09:57:41 21 ETS issues?

09:57:44 22 A I don't think anybody sat down and said to  
09:57:47 23 me, Richard, this is our global strategy. What I was --  
09:57:52 24 what I was given was an assignment to coordinate on a  
09:57:55 25 worldwide basis our research efforts with regard to ETS  
09:58:01 26 and be able to provide the company a critical evaluation  
09:58:05 27 of the scientific literature and make recommendations as  
09:58:09 28 to what kinds of research the company ought to be -- ought  
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09:58:14 1 to be engaged in.

09:58:16 2 And as part of that, made recommendations to  
09:58:19 3 the company as to our view of the science as it might  
09:58:23 4 relate to the company's positions on these questions.

09:58:27 5 Q When you took over in 1993, were you the

09:58:31 6 coordinating scientist for the USA?

09:58:33 7 MR. STONE: Objection; vague and ambiguous.

09:58:34 8 THE WITNESS: I was the coordinating

09:58:36 9 scientist for our worldwide efforts, not just the United

09:58:40 10 States.

09:58:40 11 BY MR. McGUIRE:

09:58:40 12 Q Are you aware of any documents that were

09:58:58 13 issued by Philip Morris between 1988 and 1993 that

09:59:05 14 indicate that Philip Morris is abandoning the strategy of

09:59:11 15 keeping the controversy alive, as indicated in Exhibit

09:59:15 16 4017?

09:59:16 17 MR. STONE: Same objections regarding the

09:59:18 18 exhibit. Also hearsay, compound, assumes facts not in

09:59:20 19 evidence, lacks foundation, calls for speculation.

09:59:24 20 MR. RICHARDSON: Join in the objection.

09:59:26 21 MR. MILES: Join.

09:59:28 22 THE WITNESS: Since I've not seen this

09:59:29 23 document and since I was not aware that there, as you put

09:59:34 24 it, was a global strategy, if I would have seen a document

09:59:39 25 that somehow repudiated what I hadn't seen before, I

09:59:42 26 probably would have asked the question of what does this

09:59:45 27 mean. But I never understood this to be our global

09:59:50 28 strategy. And your question is unanswerable since this

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10:00:03 1 was not what I was made aware of in terms of what my

10:00:07 2 responsibilities were supposed to be.

10:00:08 3 BY MR. McGUIRE:

10:00:08 4 Q Did you ever talk to Sharon Bose, Dr. Bose,

10:00:15 5 about the global strategy?

10:00:19 6 A I think I've spoken to Dr. Bose twice in ten

10:00:25 7 years, and it was in the form of good morning and then

10:00:31 8 good afternoon. I believe that I never had, nor have I

10:00:40 9 heard her at any of these meetings, have any substantive

10:00:48 10 contributions to the meetings, other than social

10:00:52 11 commentary.

10:00:56 12 Oh. Sorry. I saw her one other time in a

10:01:06 13 litigation environment unrelated to environmental tobacco

10:01:11 14 smoke, and we just said hello in passing.

10:01:15 15 Q Presently, Philip Morris has a group of

10:01:18 16 scientists that critically review the scientific

10:01:21 17 literature of ETS, correct?

10:01:24 18 A Yes.

10:01:24 19 MR. STONE: Objection; asked and answered

10:01:26 20 yesterday.

10:01:27 21 BY MR. McGUIRE:

10:01:31 22 Q Isn't it true that the purpose of doing that

10:01:33 23 is to keep the controversy alive?

10:01:35 24 MR. STONE: Objection; asked and answered,

10:01:36 25 argumentative, assumes facts not in evidence, vague and

10:01:39 26 ambiguous.

10:01:45 27 THE WITNESS: As I have tried to answer on a

10:01:47 28 number of occasions, most recently maybe two questions

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10:01:49 1 ago, the purpose of our evaluations of the scientific

10:01:54 2 literature are at least twofold: one, to make sure that

10:02:02 3 if we feel there are gaps that need to be filled, research

10:02:06 4 gaps, that we try to do that, primarily through outside

10:02:12 5 funding, though not limited to outside funding.

10:02:14 6 The second is that based on our evaluations

10:02:17 7 and/or any research that we've ended up supporting, is to

10:02:22 8 go back to the company and speak to the necessary people

10:02:27 9 about any recommendations we would have regarding the

10:02:30 10 science and any potential positions the company might want



10:02:35 11 to consider taking with regard to some of these questions.  
10:02:37 12 So in terms of keeping the controversy alive,  
10:02:48 13 your point, I would say, that that was not in or on the  
10:02:53 14 radar screen for the Philip Morris scientists that were  
10:02:58 15 employed to engage in the evaluation of ETS studies.  
10:03:02 16 BY MR. McGUIRE:  
10:03:02 17 Q As of 1993?  
10:03:04 18 A Yes.  
10:03:04 19 Q Aren't you keeping the controversy alive  
10:03:15 20 today, by virtue of the positions that have been taken  
10:03:19 21 regarding the Cal EPA report and other reports that we've  
10:03:25 22 marked as exhibits yesterday, the 9th Report on  
10:03:28 23 Carcinogens, for example?  
10:03:31 24 MR. STONE: Objection; vague and ambiguous,  
10:03:33 25 argumentative, assumes facts not in evidence, lacks  
10:03:35 26 foundation.  
10:03:37 27 THE WITNESS: I think for those people in the  
10:03:39 28 world that want to move through it and in the process  
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10:03:45 1 think about things, one always asks questions. And  
10:03:51 2 sometimes those questions agree with what other people say  
10:03:55 3 and sometimes they don't. I think it's a human  
10:03:57 4 prerogative, and it's part of the basis for the freedoms  
10:04:02 5 that are enjoyed in this company.  
10:04:04 6 And so if we disagree with something, that's  
10:04:07 7 based on factual information, not for any subrosea  
10:04:17 8 purpose, keeping the controversy alive has a rather  
10:04:20 9 egregious connotation to it.  
10:04:22 10 But disagreement and dispute is a natural  
10:04:26 11 part of scientific discussion, and that's all we're  
10:04:28 12 engaging in.  
10:04:29 13 BY MR. McGUIRE:  
10:04:29 14 Q How come you haven't been able to convince  
10:04:32 15 any public health organization to come around to your view  
10:04:35 16 of things?  
10:04:36 17 MR. STONE: Objection; lacks foundation,  
10:04:38 18 calls for speculation, assumes facts not in evidence.  
10:04:42 19 It's compound and vague and ambiguous.  
10:04:44 20 You can answer.  
10:04:44 21 THE WITNESS: I think what we have here is a  
10:04:47 22 dichotomy in perspective between public health  
10:04:53 23 organization -- public health organizations and scientists.  
10:04:56 24 And this is -- this is best -- best expressed  
10:05:00 25 in a variety of public health publications and policy --  
10:05:05 26 policy decisions. And if you want me to go into that in  
10:05:10 27 more detail, I will.  
10:05:11 28 But suffice it, at least for me to say, that  
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10:05:16 1 from a public health perspective, there is -- has been an  
10:05:20 2 expressed position that they don't have to cross every 'T'  
10:05:24 3 and dot every 'I' to put forward a public health policy.  
10:05:29 4 They don't have to understand how things might or might  
10:05:33 5 not be doing it. It's sufficient that somebody has raised  
10:05:35 6 a red flag, and they will act -- act upon that.  
10:05:39 7 I'm not being critical of it. I think in  
10:05:43 8 terms of the public good and the protection of the public  
10:05:46 9 good, that is not an incorrect or irresponsible thing to  
10:05:52 10 make. But let's not make it on the back of inconclusive  
10:05:59 11 or marginal scientific information.  
10:06:02 12 BY MR. McGUIRE:  
10:06:02 13 Q Have you ever discussed the problem of  
10:06:05 14 attribution, with the scientists at INBIFO or Neuchatel?  
10:06:15 15 MR. STONE: Objection; vague and ambiguous,

10:06:16 16 argumentative.

10:06:18 17 THE WITNESS: The question of attribution is

10:06:20 18 an important question, and it is one in which there is a

10:06:26 19 company policy on. And discussions that relate to it is

10:06:32 20 to provide assurances that any investigator that takes

10:06:35 21 money from Philip Morris and publishes information needs

10:06:40 22 to provide attribution as to whether that money was in

10:06:44 23 toto or, in part, contributory towards their efforts.

10:06:49 24 So it's a company policy. We -- we've had

10:06:53 25 and I think continue to have discussions to try to ensure

10:06:56 26 that those policies -- that policy is followed.

10:06:59 27 BY MR. McGUIRE:

10:06:59 28 Q When did the company adopt this policy that  
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10:07:04 1 you've just stated?

10:07:06 2 A In the time that I've -- I've been employed,

10:07:13 3 for sure, when I became involved with the ETS, part of my

10:07:17 4 responsibility, it was -- there were several direct

10:07:23 5 pronouncements about this. Whether there were other

10:07:27 6 policies prior to that, I don't know. There could have

10:07:31 7 been. Maybe there were. Maybe there weren't.

10:07:34 8 But I know by the time I got involved in ETS,

10:07:39 9 there was a lot of attention being paid to that.

10:07:42 10 Q Are you saying that after 1993, there was

10:07:46 11 never a scientific report that was referenced by Philip

10:07:51 12 Morris that did not clearly attribute Philip Morris'

10:07:54 13 involvement in -- from a monetary standpoint in that

10:08:00 14 work?

10:08:01 15 MR. STONE: Objection -- let me just make my

10:08:03 16 objections. Argumentative as to form. Overbroad and

10:08:05 17 lacks foundation.

10:08:07 18 THE WITNESS: Well, I can't say ever. All I

10:08:10 19 can tell you is what I just previously answered, that the

10:08:13 20 intent was to try to ensure that that policy was -- was

10:08:20 21 followed. Could some things have fallen through the

10:08:23 22 cracks? Yes. Did some things fall through the cracks?

10:08:27 23 I'm at least aware of one that I became aware of and

10:08:33 24 immediately brought it to the proper people's attention.

10:08:37 25 And that didn't happen again. But the policy was put in

10:08:41 26 place. We tried to ensure that that happened. Was it

10:08:47 27 100-percent foolproof? There is at least one example that

10:08:54 28 I can remember right now in which it didn't happen.  
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10:08:57 1 BY MR. McGUIRE:

10:08:57 2 Q Okay. Would you tell me when that was and

10:09:00 3 who was involved.

10:09:01 4 A Well, I'd have to go back and look at the

10:09:11 5 date of the publication, but it was a publication by

10:09:18 6 Drs. Gratt and Chappelle, doing a sort of an interesting

10:09:27 7 kind of temporal meta analysis, using ETS studies as an

10:09:36 8 example.

10:09:36 9 I read this article. I said, oh, this is --

10:09:40 10 this is great. And then I looked at the attribution, and

10:09:43 11 there was no attribution. So I immediately called up, and

10:09:50 12 the authors were contacted. And they apologized for

10:09:53 13 the -- for leaving that off and said it would never -- it

10:09:59 14 would never happen -- it would never happen again. And I

10:10:03 15 did not follow up any more on that.

10:10:06 16 Q How do you spell the first doctor that was

10:10:10 17 the first author?

10:10:11 18 A G- -- I think it's G-r-a-t-t.

10:10:15 19 Q Is that a 1997 article?

10:10:21 20 A If you have the title, that might -- that

10:10:24 21 might help.

10:10:25 22 Q I know the name is familiar.

10:10:27 23 Does that fit temporally with what your

10:10:30 24 memory is, 1997?

10:10:32 25 A It's in the -- that time frame. But whether

10:10:35 26 it's that publication or -- we'd have to look at the

10:10:40 27 title. That would help me.

10:10:41 28 Q Other than the Gratt article, are there

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10:10:45 1 any -- well, that's the only one you said you could

10:10:49 2 remember at this time; is that correct?

10:10:49 3 A Yes.

10:10:50 4 Q Is that the only one that you have a

10:10:52 5 recollection of bringing to the attention of the authors,

10:10:56 6 the lack of attribution?

10:11:00 7 A That I did, yes.

10:11:01 8 Q Do you know of anyone else who has brought to

10:11:05 9 the attention of authors that their failure to attribute

10:11:10 10 the financial support for their work to Philip Morris or

10:11:16 11 any agent -- outside agent of Philip Morris who was used

10:11:23 12 to fund the research?

10:11:26 13 MR. STONE: Objection; compound, vague and

10:11:27 14 ambiguous.

10:11:30 15 THE WITNESS: I don't know the answer to that

10:11:32 16 question.

10:11:32 17 BY MR. McGUIRE:

10:11:32 18 Q Do you mean you don't know of anyone else who

10:11:41 19 brought to the attention failure to attribute support from

10:11:46 20 Philip Morris?

10:11:48 21 MR. MILES: Assumes facts the way it's

10:11:49 22 worded.

10:11:49 23 BY MR. McGUIRE:

10:11:49 24 Q You said, "I don't know the answer."

10:11:54 25 A I don't know whether anybody has or hasn't

10:11:59 26 is what I meant by my answer.

10:12:00 27 Q Okay. And you cannot give me any better date

10:12:04 28 as to -- you didn't give me a date. You said I don't

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10:12:07 1 remember the date. But was the policy that you discussed

10:12:13 2 implemented shortly before you left the company?

10:12:18 3 A No. As I answered earlier, it was in place

10:12:22 4 when I was employed.

10:12:23 5 Q The attribution?

10:12:25 6 A Yes, sir.

10:12:26 7 Q In place in 1988 -- excuse me -- '89?

10:12:30 8 A I don't know if it was in place in '89. It

10:12:33 9 was in place when I took over in '93.

10:12:38 10 Q Was Dr. Charles still working there in 1993,

10:12:46 11 working at Philip Morris?

10:12:47 12 A No. He had retired, I believe.

10:12:48 13 Q If you turn to the second page, the second

10:13:08 14 full paragraph, which begins, "The consultants should,

10:13:15 15 ideally, according to Philip Morris, be European

10:13:19 16 scientists," et cetera.

10:13:22 17 MR. STONE: Same objections to the document.

10:13:25 18 THE WITNESS: I'm sorry. I was -- my mind

10:13:28 19 was focusing on this. Would you mind. So the second full

10:13:33 20 paragraph starting with?

10:13:37 21 BY MR. McGUIRE:

10:13:37 22 Q "The consultants should." If you would read

10:13:42 23 that to yourself.

10:13:44 24 MR. RICHARDSON: Join in the objection.

10:13:47 25 MR. MILES: Join.

10:13:48 26 BY MR. McGUIRE:  
10:13:48 27 Q Does this in any way also describe the effort  
10:14:08 28 that -- that was under way while you were in charge of  
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10:14:10 1 ETS?  
10:14:11 2 MR. STONE: Objection; improper as to form,  
10:14:14 3 hearsay, in addition to my other objections.  
10:14:16 4 You can answer.  
10:14:17 5 THE WITNESS: In 1993, whereabouts I was  
10:14:22 6 given responsibility for this program, we started an  
10:14:25 7 internal review under my initiative with regard to  
10:14:30 8 scientists the company was using around the world with  
10:14:34 9 regard to environmental tobacco smoke.  
10:14:37 10 As a result of that review and analysis, a  
10:14:43 11 significant number of the scientists that -- outside  
10:14:47 12 scientists that had been used as consultants were  
10:14:51 13 dropped -- were dropped as consultants. And we then, as  
10:14:56 14 part of that, initiated our own program for finding  
10:15:00 15 scientists and individuals that we felt were -- how should  
10:15:09 16 I -- how should I put this? More relevant for the issues  
10:15:12 17 that we were moving -- we were moving forward on.  
10:15:16 18 So I'm not aware of this, but I -- I can tell  
10:15:24 19 you, as I sit here today, answering this question, we  
10:15:30 20 reordered our house with regard to outside -- outside  
10:15:36 21 scientists based on criteria that we had established in  
10:15:41 22 terms of what our efforts were going to be under the  
10:15:44 23 program that I was responsible for.  
10:15:45 24 BY MR. McGUIRE:  
10:15:45 25 Q Were any of the scientists that dropped  
10:15:58 26 working for INBIFO?  
10:16:00 27 A Are you asking me were they employees of  
10:16:04 28 INBIFO?  
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10:16:04 1 Q Yes, sir.  
10:16:05 2 A INBIFO is part of Philip Morris, and the  
10:16:09 3 consultants I thought we were talking about were people  
10:16:12 4 that were not employees of Philip Morris.  
10:16:14 5 Q I know.  
10:16:15 6 Did you drop any scientists from INBIFO as  
10:16:18 7 part of your review of the program?  
10:16:20 8 A Not that I'm aware of. No, absolutely not.  
10:16:28 9 Q And what was the criteria that you used to  
10:16:30 10 drop a scientist who was an outside scientist?  
10:16:40 11 A The criteria involved the quality of their  
10:16:48 12 publications in the peer -- peer-reviewed literature and  
10:16:55 13 the fact that we were looking to broaden the areas of  
10:17:03 14 interest that we needed some help on scientifically to try  
10:17:09 15 to understand some things.  
10:17:13 16 And so if we had four people that were of the  
10:17:17 17 same kind, we didn't need four people doing the same  
10:17:21 18 thing. We only probably needed one.  
10:17:22 19 And then I took the three other slots with  
10:17:28 20 the dollars associated with those three other slots, and I  
10:17:32 21 went and my colleague scientists went out and found three  
10:17:35 22 other kinds of people with three other kinds of expert --  
10:17:38 23 expertise. So we went out, and we got, as consultants,  
10:17:44 24 highly qualified statisticians, for example. We went out,  
10:17:50 25 and we got very specific kinds of indoor air quality  
10:17:53 26 engineers. We went out, and we got analytical chemists  
10:18:01 27 with specialiality in measuring constituents in an aerosol  
10:18:08 28 or air matrix, for example.  
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10:18:09 1 Q Why is it important that peer-reviewed

10:18:18 2 literature be utilized?

10:18:23 3 A There's nothing wrong with nonpeer-reviewed  
10:18:27 4 literature. So get that out on the table.

10:18:33 5 Peer review provides another potential level  
10:18:40 6 of analysis by outside individuals, hopefully outside of  
10:18:46 7 the company or the industry, and what we were looking for  
10:18:55 8 was to be supporting research that would have a wide -- a  
10:19:03 9 wide impact. And for a number of reasons, peer-reviewed  
10:19:10 10 literature -- or manuscripts that are accepted in  
10:19:14 11 peer-review journals give you that. So you have at least  
10:19:16 12 two things going on.

10:19:17 13 One, you have an independent -- hopefully  
10:19:20 14 independent assessment of the data. And, two, the use of  
10:19:29 15 information that's published in the peer-reviewed journal  
10:19:34 16 oftentimes has a stronger impact than information in  
10:19:37 17 nonpeer reviewed. Though, as I said earlier, because  
10:19:43 18 things are in nonpeer-reviewed literature doesn't mean  
10:19:47 19 there's anything necessarily wrong -- wrong with it.

10:19:49 20 Q So the two reasons that you gave me, however,  
10:19:56 21 are the two things that are wrong with nonpeer-reviewed  
10:19:59 22 literature, in your opinion, correct?

10:20:01 23 MR. STONE: Objection; misstates the  
10:20:02 24 witness's testimony. Argumentative.

10:20:04 25 THE WITNESS: I didn't say there was  
10:20:08 26 anything wrong with nonpeer-reviewed literature.  
10:20:10 27 BY MR. McGUIRE:

10:20:10 28 Q Okay. Let me change it.  
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10:20:12 1 The two things that you stated are what's  
10:20:14 2 lacking in nonpeer-reviewed literature, correct?

10:20:17 3 A What limits in some people's minds the  
10:20:22 4 usefulness of that information.

10:20:24 5 Q The program that is described in the next  
10:20:51 6 paragraph as well, can you tell me whether this program of  
10:21:00 7 using scientists to operate within the confines of  
10:21:03 8 decisions taken by Philip Morris scientists and then  
10:21:08 9 having the work filtered by lawyers to eliminate areas of  
10:21:11 10 sensitivity, is that something that at one time was  
10:21:15 11 employed by Philip Morris, to your knowledge?

10:21:17 12 MR. STONE: Objection; improper use of the  
10:21:19 13 document, subject to the objections I made earlier to  
10:21:24 14 which I have a continuing objection. Object to the form  
10:21:26 15 of the question, assumes facts not in evidence, compound,  
10:21:29 16 vague and ambiguous, lacks foundation.

10:21:33 17 MR. RICHARDSON: Join in the objection.

10:21:34 18 MR. MILES: Join.

10:21:36 19 THE WITNESS: As to this paragraph, which is  
10:21:41 20 one sentence, speaking from my personal -- personal  
10:21:45 21 experience, this was not how -- how we operated.

10:21:52 22 Did people, prior to me taking over, operate  
10:21:55 23 in this way? I'm not sure what the word "filtered" --  
10:21:59 24 "filtered" means. And I'm not sure what the word -- what  
10:22:02 25 the phrase "operate within the confines of decisions taken  
10:22:06 26 by Philip Morris scientists."

10:22:11 27 I would say there's more than ample evidence,  
10:22:14 28 prior to me taking over, that we were directly or  
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10:22:18 1 indirectly reporting research that was -- the outcome of  
10:22:28 2 which was unknown to us, which is sort of why you do  
10:22:31 3 research.

10:22:31 4 So I don't know how you can be so omniscient  
10:22:37 5 to be able to predetermine what the outcome is going to  
10:22:39 6 be. So this -- this doesn't make sense.

10:22:43 7 And in any event, the role of lawyers with  
10:22:45 8 regard to Philip Morris scientists only occurred when the  
10:22:50 9 scientists were dealing with scientific facts within a  
10:22:54 10 regulatory -- regulatory question or potential regulatory  
10:23:00 11 question or a response to a state or federal agency.  
10:23:05 12 BY MR. McGUIRE:  
10:23:05 13 Q That's a pretty broad area, isn't it?  
10:23:09 14 MR. STONE: Objection; argumentative, vague  
10:23:10 15 and ambiguous.  
10:23:10 16 BY MR. McGUIRE:  
10:23:10 17 Q Can you think of any research that Philip  
10:23:13 18 Morris has done that wouldn't fall under one of those  
10:23:17 19 umbrellas that you just opened up?  
10:23:19 20 MR. STONE: Objection; vague and ambiguous,  
10:23:21 21 lacks foundation. I don't know what umbrellas we're  
10:23:24 22 talking about.  
10:23:25 23 BY MR. McGUIRE:  
10:23:25 24 Q Something that may deal with scientific facts  
10:23:27 25 within a regulatory or potential regulatory question or a  
10:23:32 26 response to a state or federal agency or potential  
10:23:35 27 response to a state or federal agency.  
10:23:37 28 MR. STONE: That's not what he said.  
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10:23:39 1 Misstates the witness's testimony, argumentative and  
10:23:41 2 compound.  
10:23:41 3 BY MR. McGUIRE:  
10:23:41 4 Q I just described the umbrellas a little more  
10:23:45 5 specifically.  
10:23:45 6 A So is there a question?  
10:23:48 7 MR. STONE: I don't know if there is one.  
10:23:49 8 BY MR. McGUIRE:  
10:23:49 9 Q I said, yes, can you think of anything that  
10:23:52 10 Philip Morris does that wouldn't either potentially or  
10:23:55 11 actually involve one of these areas?  
10:23:58 12 MR. STONE: Same objections.  
10:23:59 13 You can answer.  
10:24:00 14 THE WITNESS: Let me be more specific.  
10:24:01 15 When OSHA filed a notice of proposed rule  
10:24:04 16 making, lawyers and Philip Morris scientists got together  
10:24:12 17 with regard to the response the company was going to make.  
10:24:17 18 When NTP asked for public comments, the  
10:24:21 19 scientists put together their information. The lawyers  
10:24:25 20 put together whatever it was that lawyers do. And the  
10:24:31 21 same thing with California. And all I'm saying, within  
10:24:34 22 the context of those specific situations, lawyers and  
10:24:37 23 scientists within the company got together.  
10:24:41 24 In terms of daily operation of what the  
10:24:46 25 scientists were doing with regard to outside scientific  
10:24:49 26 research or outside scientists, I would say lawyer --  
10:25:01 27 lawyer contact was not a part -- a part of the process.  
10:25:09 28 And whatever filtering means.  
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10:25:18 1 BY MR. McGUIRE:  
10:25:18 2 Q How long did Philip Morris continue to  
10:25:19 3 monetarily support Professor Parry?  
10:25:25 4 A Who?  
10:25:26 5 Q Professor Parry.  
10:25:29 6 A How do you spell his name?  
10:25:30 7 Q P-a-r-r-y.  
10:25:31 8 A I'm not aware of any Dr. Parry with that  
10:25:37 9 spelling that Philip Morris has supported.  
10:25:41 10 Q What's TAC?  
10:25:44 11 A That's a UK organization that I think has

10:25:56 12 tobacco company membership.

10:25:57 13 Q What does it stand for?

10:25:59 14 A Tobacco Advisory Council, if that's what

10:26:03 15 you're --

10:26:03 16 Q Is that still in existence?

10:26:05 17 A I have no idea. If we're talking about the

10:26:07 18 UK entity, if that's what we're talking about. If you can

10:26:16 19 point me to it, it might -- it might help.

10:26:19 20 Q Sure.

10:26:19 21 The next-to-the-last paragraph on -- I'll

10:26:21 22 read it. "In respect of Professor Parry, Dr. Gaisch said

10:26:26 23 that he strongly believed TAC should continue to support

10:26:30 24 him because it could be problematic to withdraw support

10:26:33 25 from a scientist who has been sympathetic to the

10:26:36 26 industry."

10:26:36 27 MR. STONE: Objection; hearsay. Also object

10:26:38 28 on the grounds I've previously stated as to Exhibit 4017.

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10:26:44 1 MR. MILES: Join.

10:26:44 2 MR. RICHARDSON: Join in the objection.

10:26:46 3 THE WITNESS: Again, I'm not aware of any

10:26:49 4 funding support for a Dr. Parry, as described -- as

10:26:54 5 described here. And I believe that the TAC we're talking

10:26:57 6 about is this UK industry organization.

10:27:01 7 BY MR. McGUIRE:

10:27:01 8 Q There is a list of potential consultants in

10:27:26 9 this document.

10:27:28 10 How many of these consultants have actually

10:27:33 11 performed work for the tobacco industry, if you know?

10:27:38 12 MR. STONE: Same objections previously

10:27:39 13 asserted with respect to the document, and this is an

10:27:41 14 improper use of the document that's otherwise

10:27:44 15 inadmissible.

10:27:45 16 MR. RICHARDSON: Join in the objection.

10:27:47 17 MR. MILES: Join.

10:27:49 18 THE WITNESS: Well, some of this is

10:27:51 19 impossible to discern.

10:27:53 20 BY MR. McGUIRE:

10:27:53 21 Q I'll read the names to you.

10:27:55 22 A No, I can read the names. I'm looking at the

10:27:59 23 parenthetical. For instance, on the first one, it says "a

10:28:01 24 pathologist at," and then a series of question marks,

10:28:05 25 "possibly BIBRA." I know a W. Butler, but he's not a

10:28:09 26 pathologist. And the W. Butler I know has done work for

10:28:18 27 R.J. Reynolds and submitted, I believe, documents to both

10:28:23 28 NTP and I believe to Cal EPA as well.

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10:28:26 1 Is this the same W. Butler, I don't have -- I

10:28:26 2 don't have a clue.

10:28:34 3 Looking down this list, I mean, I would

10:28:39 4 assume -- and this is just a guess -- that the name Frank

10:28:48 5 Sullivan, says "a consultant to Rothmans," we have had --

10:28:53 6 Philip Morris has had a Dr. Frank Sullivan in Australia

10:28:58 7 prepare a review at our request on ETS and SIDS, which I'm

10:29:06 8 hoping will be published. Whether that's the same Frank

10:29:09 9 Sullivan or not, I don't know.

10:29:12 10 And those would be the only names on this

10:29:18 11 list that I can speak to in terms of names that I

10:29:24 12 recognize. Now, whether these are those people or not, I

10:29:28 13 don't know.

10:29:28 14 Q Have you ever worked with any attorneys whose

10:29:45 15 responsibility it was to coordinate ETS activities in a

10:29:50 16 geographic area? For example, do you know John Rupp?

10:29:59 17 A Yes. John Rupp I know primarily because he  
10:30:06 18 was the general counsel for CIAR.

10:30:10 19 Q And do you know David -- oh. We asked that  
10:30:21 20 yesterday, I think.

10:30:21 21 A Yes, we did.

10:30:23 22 Q Any other Covington and Burling lawyers who  
10:30:29 23 were commissioned to coordinate Philip Morris' ETS  
10:30:32 24 activities in the geographic areas that are set forth in  
10:30:36 25 that paragraph?

10:30:37 26 MR. STONE: Objection; assumes facts not in  
10:30:39 27 evidence, lacks foundation, argumentative in form,  
10:30:43 28 improper use of the document, misstates the witness's  
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10:30:46 1 prior testimony.

10:30:48 2 THE WITNESS: Yeah. I mean, I've not seen  
10:30:49 3 this before, but I wanted to add that the other -- the  
10:30:53 4 other place that I knew John Rupp was at the OSHA hearings  
10:30:57 5 where he, I think, was representing The Tobacco Institute  
10:31:03 6 with regard to examination of OSHA documents and OSHA  
10:31:08 7 witnesses.

10:31:08 8 But to more fully answer your -- your  
10:31:13 9 question, I -- I had met a Mr. Chuck or Charles Lister,  
10:31:21 10 who is a Covington attorney in London. And he had a  
10:31:30 11 number of things related to areas of interest to me. One  
10:31:37 12 had to do with the basis for regulations in the --

10:31:44 13 MR. MILES: Can I insert -- interject an  
10:31:47 14 objection. I'm concerned the witness may be going to  
10:31:50 15 privileged areas in describing conversations with counsel.

10:31:55 16 MR. STONE: I guess that's a fair point. Why  
10:31:59 17 don't I take a short break and just inquire of the  
10:32:01 18 witness.

10:32:04 19 VIDEOGRAPHER: We are off the record. The  
10:32:05 20 time is 10:32.

10:32:06 21 (Recess.)

10:44:04 22 VIDEOGRAPHER: We are back on the record.  
10:44:10 23 The time is 10:44.

10:44:12 24 MR. STONE: Consistent with our discussion,  
10:44:15 25 Dr. Carchman, you can complete your answer so long as you  
10:44:18 26 don't reveal any privileged communications and just  
10:44:21 27 complete the answer with respect to the subject. You  
10:44:25 28 started to say one had the basis to do with regulations in  
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10:44:29 1 the. You can complete that thought as to the subject of  
10:44:32 2 your -- general subject of your conversation, without  
10:44:35 3 revealing any privileged communications.

10:44:37 4 THE WITNESS: There were two topics. One  
10:44:39 5 related to the basis for regulations in the Europe union,  
10:44:44 6 and the second question was unrelated to ETS. And he  
10:44:47 7 directed me to another Covington lawyer that was actually  
10:44:50 8 able to help me on that topic. But, again, that was not  
10:44:54 9 related to environmental tobacco smoke.

10:44:56 10 BY MR. McGUIRE:

10:44:56 11 Q Did the council for tobacco research -- well,  
10:45:06 12 let me strike that and begin again.

10:45:09 13 Has Philip Morris ever reviewed and approved  
10:45:17 14 through their legal department what research proposals  
10:45:20 15 would be granted by the council for tobacco research?

10:45:23 16 MR. STONE: Objection; beyond the scope on  
10:45:25 17 which this witness has been designated to testify, lacks  
10:45:28 18 foundation, calls for speculation, assumes facts not in  
10:45:30 19 evidence, and would invade -- in the event any of this had  
10:45:36 20 occurred, would invade an area of which this witness's  
10:45:39 21 knowledge of it would, I believe, have been derived from



10:45:41 22 privileged communications. And on the grounds that it  
10:45:42 23 would invade privileged communications to determine any  
10:45:45 24 knowledge this witness might or might not have, I instruct  
10:45:49 25 the witness not to answer.  
10:45:51 26 BY MR. McGUIRE:  
10:45:52 27 Q Did -- before you left Philip Morris, were  
10:45:55 28 there any representatives of the legal department that  
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10:45:57 1 reviewed and participated in the approval of research  
10:46:02 2 proposals that would be granted by Philip Morris or any of  
10:46:07 3 its research entities, INBIFO, the Neuchatel group, and  
10:46:13 4 any other groups you have in any other foreign countries?  
10:46:18 5 MR. STONE: You can answer that question to  
10:46:20 6 the extent you can do so without revealing a privileged  
10:46:22 7 communication. If, in your experience, something you were  
10:46:24 8 actually involved with was reviewed or approved, as  
10:46:31 9 described by Mr. McGuire, you can answer.  
10:46:33 10 THE WITNESS: Let me see if I understand your  
10:46:37 11 question.  
10:46:37 12 Any of the research activities related to  
10:46:42 13 ETS that the Philip Morris scientists were interested in  
10:46:48 14 doing, whether it was at Neuchatel or INBIFO, or outside,  
10:46:57 15 did it have to go through lawyers first?  
10:46:59 16 BY MR. McGUIRE:  
10:46:59 17 Q Not go through lawyers.  
10:47:03 18 Was there a representative of the legal  
10:47:05 19 department that was part of the panel that approved these  
10:47:08 20 kind of grants?  
10:47:09 21 THE WITNESS: No.  
10:47:09 22 MR. STONE: Objection; assumes facts not in  
10:47:10 23 evidence.  
10:47:11 24 BY MR. McGUIRE:  
10:47:11 25 Q Did it have to go through lawyers after the  
10:47:13 26 approval by the scientists?  
10:47:16 27 MR. STONE: Same objections.  
10:47:17 28 THE WITNESS: No.  
Vail, Christians & Associates (619)544-8344 248  
10:47:17 1 BY MR. McGUIRE:  
10:47:17 2 Q There was no approval by the legal department  
10:47:19 3 of Philip Morris as to what research projects would be  
10:47:22 4 granted; is that correct?  
10:47:23 5 A Not that I'm aware of.  
10:47:25 6 Q Were you involved in discontinuing --  
10:47:28 7 MR. STONE: I didn't -- can I interrupt. I  
10:47:32 8 didn't see an answer to the first question.  
10:47:34 9 THE REPORTER: One moment.  
10:47:34 10 MR. STONE: Do you have one?  
10:47:34 11 MR. McGUIRE: What's the question?  
10:47:34 12 MR. STONE: "Was there a representative of  
10:48:13 13 the legal department that was part of the panel that  
10:48:13 14 approved these kind of grants." I objected. I think the  
10:48:13 15 answer -- I think the witness answered it "no," but he  
10:48:13 16 answered it somewhat quietly about the time I objected.  
10:48:13 17 Maybe at the same time. So if you would just review the  
10:48:13 18 video on that, that will be fine. Thank you. I  
10:48:13 19 understand we're looking at a rough transcript, and I  
10:48:13 20 didn't mean to question it.  
10:48:13 21 THE REPORTER: Okay. Thank you.  
10:48:13 22 MR. STONE: Thank you.  
10:48:13 23 BY MR. McGUIRE:  
10:48:13 24 Q Do you think that if there was some type of  
10:48:22 25 approval mechanism, that they would tell you about it?  
10:48:24 26 MR. STONE: Objection; calls for speculation,

10:48:26 27 lacks foundation, vague and ambiguous, argumentative.  
10:48:33 28 THE WITNESS: I'm not sure how there could be  
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10:48:35 1 an approval mechanism involving lawyers or research  
10:48:40 2 proposal or research project we were -- we were  
10:48:46 3 carrying -- we were carrying forward. I don't know how  
10:48:49 4 that would happen.  
10:48:49 5 BY MR. McGUIRE:  
10:48:49 6 Q Were you involved in any meetings where  
10:49:02 7 discontinuation of ongoing projects were discussed and  
10:49:07 8 agreed upon?  
10:49:07 9 MR. STONE: Objection; overbroad.  
10:49:15 10 THE WITNESS: Probably so.  
10:49:17 11 BY MR. McGUIRE:  
10:49:17 12 Q Did any of those discontinued projects  
10:49:23 13 involve environmental tobacco smoke in any way?  
10:49:27 14 A That's what I'm -- that's what I'm reflecting  
10:49:30 15 on. I think the -- there were -- I think there probably  
10:49:34 16 were some related to ETS and probably some related in some  
10:49:38 17 nonETS areas as well.  
10:49:39 18 Q With respect to the ETS programs, which ones  
10:49:44 19 do you recollect, as you sit here now, were discontinued?  
10:49:49 20 A I'm not limiting my thinking to solely Philip  
10:49:53 21 Morris, but I'm thinking of something that occurred at the  
10:50:00 22 Center for Indoor Area Research where there was a project  
10:50:07 23 the center had agreed to fund, and we -- we -- maybe  
10:50:16 24 discontinued is not absolutely -- absolutely  
10:50:20 25 accurate. But maybe it is.  
10:50:24 26 So there is some vagueness in my mind whether  
10:50:29 27 discontinue is correct, but in any event, we stopped  
10:50:32 28 funding this research.  
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10:50:34 1 Q Did the -- does the Center for Indoor Air  
10:50:40 2 Research issue grants on only a 12-month basis?  
10:50:43 3 A Actually, it's really a contract, and I think  
10:50:50 4 they're done on a yearly basis with a contingency going  
10:50:55 5 out further -- further than that. Sometimes they go out  
10:50:59 6 for three or four years, but it's -- it's as with the  
10:51:03 7 National Institutes of Health, they're, on a yearly basis,  
10:51:07 8 contingent upon whatever milestones the contract had in  
10:51:14 9 place. Whether it was doing a certain amount of work,  
10:51:16 10 providing reports, or some -- some parameter such as that.  
10:51:24 11 Q We discussed this, I believe, yesterday. I  
10:51:32 12 just don't recollect your answer.  
10:51:34 13 Is the CIAR still operational?  
10:51:37 14 A We did discuss it, and my answer was no  
10:51:41 15 longer. And you asked me when, and I said sometime last  
10:51:45 16 year.  
10:51:45 17 Q I think you said after the MSA?  
10:51:48 18 A Right.  
10:51:49 19 Q Is there some organization that has taken the  
10:52:02 20 place of CIAR but perhaps without any of the -- well, let  
10:52:09 21 me just ask you that.  
10:52:11 22 Is there some organization that serves the  
10:52:13 23 same role that CIAR did when it was in existence,  
10:52:16 24 presently?  
10:52:17 25 MR. STONE: Objection; asked and answered  
10:52:18 26 yesterday.  
10:52:19 27 MR. MILES: Also vague.  
10:52:22 28 THE WITNESS: I believe you asked me if not  
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10:52:24 1 that identical question, pretty much the same question.  
10:52:27 2 And I believe I gave you an answer then to that, and that

10:52:35 3 answer is that Philip Morris, on its own, has  
10:52:38 4 incorporated, as part of its external research program,  
10:52:43 5 the responsibility for continuing to carry out ETS-related  
10:52:50 6 research on a worldwide basis for it to support --  
10:52:54 7 sorry -- to support external research on ETS on a  
10:52:57 8 worldwide basis.  
10:52:58 9 BY MR. McGUIRE:

10:52:58 10 Q Is Philip Morris the only tobacco  
10:53:03 11 manufacturer that is doing that?

10:53:06 12 A I don't know. I'm sorry.  
10:53:10 13 Our program is strictly Philip Morris. If  
10:53:15 14 your question is, is some other tobacco company a party to  
10:53:19 15 it, the answer is no. If you're asking me extant that, is  
10:53:25 16 R.J. Reynolds, B&W, or somebody, I don't know.

10:53:32 17 Q You mentioned something yesterday about a  
10:53:46 18 website.  
10:53:47 19 What, if anything, do you have or have you  
10:53:49 20 had to do with the information appearing on Philip Morris'  
10:53:52 21 website as it relates to environmental tobacco smoke?

10:53:56 22 A At various times, I have been a party to and  
10:54:04 23 asked for input as to those parts of the Philip Morris  
10:54:13 24 website on ETS that touch upon health -- health-related  
10:54:19 25 issues.

10:54:19 26 Q Can you be any more specific than that? In  
10:54:29 27 other words, can you give me a for example, I did this. I  
10:54:32 28 did that.

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10:54:33 1 A Sure.  
10:54:37 2 This week, I was party to a discussion with  
10:54:45 3 Dr. Solana on two website issues, one that's already  
10:54:54 4 been -- was implemented yesterday or the afternoon of the  
10:54:58 5 day before. And that was putting the clickon access to  
10:55:02 6 the NTP 9th Report on Carcinogens. So it was pleasing to  
10:55:11 7 see the repeatity with which that happened on the website.  
10:55:16 8 The second part is something that hasn't --  
10:55:21 9 hasn't happened yet, because, as I said earlier, one of  
10:55:23 10 the roles of the Philip Morris scientists, of which  
10:55:26 11 Dr. Solana is now thankfully responsible for, is to make  
10:55:31 12 recommendations to the company with regard to ETS science  
10:55:34 13 and positions. And the website, you know, offers Philip  
10:55:37 14 Morris a platform, an opportunity, if you will, to be able  
10:55:41 15 to express to people what our thinking on some topics are.  
10:55:48 16 And so there continues to be -- it's a  
10:55:54 17 dynamic kind of process where as new information comes in,  
10:56:00 18 new insights come in, the website will -- will be  
10:56:04 19 modified. And that happened this week.  
10:56:11 20 I think the week before, there was another --  
10:56:13 21 another discussion with Philip Morris scientists headed by  
10:56:17 22 Dr. Solana regarding ETS and the website.  
10:56:22 23 There were others, but those are the ones  
10:56:26 24 that are freshest in my memory.

10:56:28 25 Q Who -- who is responsible for the ETS -- who  
10:56:34 26 is responsible for the website information?

10:56:38 27 A I don't know the answer to that question. I  
10:56:42 28 mean --

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10:56:44 1 Q When was the NTP 9th Report on Carcinogens  
10:56:50 2 issued?

10:56:51 3 A Recently.

10:56:52 4 Q Does Philip Morris have a historical tape  
10:56:59 5 which -- if you know, which archives the position that  
10:57:08 6 they have taken on various issues, including ETS, since  
10:57:13 7 the time the website was begun?

10:57:15 8 A I don't know the answer to that question.  
10:57:17 9 Q You said, "So it was pleasing to see the  
10:57:23 10 repeatity with which that happened on the website."  
10:57:28 11 Explain what you mean by that.  
10:57:29 12 A Dr. Solana spoke to Dr. Nelson and said this  
10:57:36 13 report is out. We need to get it on the website. And he  
10:57:42 14 did that within the last week, and wha-la.  
10:57:51 15 Q Does Philip Morris provide links to other  
10:58:04 16 organizations who have positions on ETS that are contrary  
10:58:10 17 to Philip Morris' position?  
10:58:12 18 A I believe so, yes.  
10:58:13 19 Q Yes?  
10:58:14 20 A Yes.  
10:58:14 21 Q Are these -- other than governmental  
10:58:19 22 agencies, are private foundational type institutions  
10:58:23 23 included, such as the Cancer Society, Lung Association,  
10:58:27 24 people like that?  
10:58:28 25 A I'm -- I'm not sure, but I know it has links  
10:58:33 26 to governmental. And it may even have some to some  
10:58:38 27 nongovernmental. And, by that, I mean -- I'd have to go  
10:58:43 28 back and refer to it, whether it's a WHO or a subsidiary  
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10:58:48 1 of WHO site, or maybe even a National Academy of Sciences  
10:58:56 2 site. But I'd have to go back. I've never looked at it  
10:59:03 3 from that perspective, Mr. McGuire.  
10:59:04 4 Q On how many occasions have you reviewed the  
10:59:08 5 website information with respect to ETS for purposes of  
10:59:13 6 commenting or providing input to the company before you  
10:59:18 7 left employment with them?  
10:59:21 8 A Several times. Numerous times.  
10:59:26 9 Q And have you done this after you left -- when  
10:59:29 10 you went to your consultancy position after February  
10:59:33 11 of 1999, did you continue to -- or do you continue to  
10:59:37 12 provide that information or input?  
10:59:38 13 A Yes. As I said in one of our recent  
10:59:44 14 question-and-answer exchanges, within the last ten days,  
10:59:47 15 I've had two conversations with Dr. Solana and his  
10:59:50 16 colleagues regarding the ETS website.  
10:59:52 17 Q Exhibit 4018, for identification, is a  
11:00:09 18 consultation report distributed by World Health  
11:00:14 19 Organization.  
11:00:15 20 Did you have an opportunity to review that  
11:00:18 21 yesterday or last evening?  
11:00:20 22 A Last evening.  
11:00:22 23 What shall I do with this?  
11:00:24 24 Q You can just push it over there.  
11:00:25 25 A Thank you.  
11:00:27 26 Yes. Yes, I had an opportunity to look at  
11:00:29 27 this last evening.  
11:00:31 28 MR. STONE: I'm going to object to Exhibit  
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11:00:32 1 4018 on the grounds that it's not authentic and it's  
11:00:36 2 incomplete.  
11:00:46 3 MR. RICHARDSON: Join in the objection.  
11:00:48 4 MR. MILES: Join.  
11:00:50 5 MR. LENDRUM: I also join.  
11:00:51 6 BY MR. McGUIRE:  
11:00:51 7 Q Have you ever seen this document before?  
11:00:53 8 A No.  
11:00:54 9 Q Are you going to recommend to Dr. Solana that  
11:01:03 10 he put this document and/or the full report up on the  
11:01:08 11 website?  
11:01:09 12 MR. STONE: Objection; calls for speculation,

11:01:11 13 argumentative, lacks foundation.

11:01:18 14 THE WITNESS: I think there is some important

11:01:21 15 things in this website -- in this -- excuse me -- in this

11:01:26 16 consultation report, some of which we have already adopted

11:01:31 17 or taken the position and/or I agree with. But in the

11:01:34 18 absence of seeing the full report and the background

11:01:38 19 reports that are referred to but are not present in here,

11:01:42 20 I think I would have to take a look at it. Though, I feel

11:01:48 21 confident that some scientists within Dr. Solana's

11:01:52 22 organization probably have this document in its entirety.

11:01:58 23 But I take your question most seriously, and

11:02:04 24 when I see Dr. Solana next week, I will ask him.

11:02:07 25 BY MR. MCGUIRE:

11:02:07 26 Q Did Philip Morris provide any input to the

11:02:14 27 World Health Organization regarding this consultation?

11:02:18 28 A I -- I am not aware of it, nor can I tell

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11:02:22 1 from reading this document, since it's incomplete, in the

11:02:29 2 scientific presentations, that these conclusions relied

11:02:33 3 upon were not included. I haven't -- I haven't seen this

11:02:36 4 or them before.

11:02:37 5 Q What positions in the part of the document

11:02:48 6 that you have seen do you agree with?

11:02:51 7 A Okay. Let me just state for clarity, this is

11:02:59 8 not a WHO position document. This is a document that

11:03:05 9 reflects the opinions of the people who were involved in

11:03:13 10 this. They're the ones that are held responsible for it,

11:03:16 11 and it says so on page 2 on the bottom.

11:03:20 12 So I'm not sure as to the legitimacy of

11:03:30 13 having this as a website clickon with a WHO header,

11:03:35 14 without having some caveats. But that's neither here --

11:03:39 15 that's for the lawyers to worry about. I mean, I will

11:03:41 16 convey this point to Dr. Solana.

11:03:43 17 Now, with regard to your question --

11:03:45 18 Q Before you go to my question, this is

11:03:47 19 copyrighted by the World Health Organization, correct?

11:03:52 20 MR. STONE: Where is that?

11:03:52 21 BY MR. MCGUIRE:

11:03:53 22 Q Right above where you referred me to where it

11:03:57 23 says it's not a formal presentation, but right above it,

11:04:00 24 that's a copyright bug with World Health Organization

11:04:05 25 1999, correct?

11:04:06 26 A That doesn't mean anything to me. But it

11:04:08 27 does say at the bottom, "The views expressed in documents

11:04:10 28 by named authors are solely the responsibility of those

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11:04:13 1 authors." That, in my world, is a disclaimer. So. But

11:04:18 2 that's for people with other interests to include, to

11:04:22 3 worry about, not -- not for me.

11:04:24 4 So, for example, in this document, it --

11:04:30 5 though the focus based on the title you would believe is

11:04:35 6 environmental tobacco smoke and child health, there is a

11:04:38 7 significant -- there are significant inputs with regard to

11:04:46 8 maternal smoking during pregnancy and a number of

11:04:49 9 outcomes, some of which are adverse and some of which

11:04:55 10 represent differences which may or may not be adverse.

11:04:59 11 I would just state that their position on

11:05:03 12 that women who are pregnant shouldn't smoke is a position

11:05:09 13 that Mr. Bible has stated publicly. So I would say

11:05:14 14 Mr. Bible is the chairman of the corporation has stated

11:05:19 15 it, and I can tell you that the scientists within Philip

11:05:23 16 Morris who are knowledgeable in this area, which is at

11:05:27 17 least superficially not related to ETS, believe that the

11:05:32 18 scientific data supports that view.  
11:05:34 19 So that's something that the scientists and  
11:05:37 20 Mr. Bible and, by extension, the company agrees with.  
11:05:41 21 That's one.  
11:05:44 22 The second -- and some of this is directly  
11:05:48 23 evident in our website, directly relating to ETS, regards  
11:05:52 24 smoking around children. And I think also -- and I don't  
11:05:57 25 have it in front of me, Mr. McGuire -- also talks about --  
11:06:03 26 may talk about asthma and how one should avoid smoking  
11:06:06 27 around those kinds of individuals.  
11:06:08 28 So, again, both the scientists within the  
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11:06:13 1 company who are knowledgeable in this area as well as the  
11:06:16 2 company, as expressed in its website, would agree -- would  
11:06:20 3 agree with this.  
11:06:21 4 For example, in terms of a disease outcome  
11:06:28 5 called SIDS, Sudden Infant Death Syndrome, this document  
11:06:32 6 basically lays that on the threshold of maternal smoking  
11:06:39 7 and says with regard to ETS, more research needs to be  
11:06:44 8 done. It does the same thing with neuro behavioral  
11:06:52 9 effects. And I would say though that's pretty consistent  
11:06:56 10 with our view, it would appear to be somewhat at odds with  
11:06:59 11 some of the positions taken in your California --  
11:07:03 12 California document, just as an -- just as an aside.  
11:07:08 13 But within the text here, from what I was  
11:07:11 14 able to glean, without seeing the scientific background  
11:07:15 15 and only spending part of the evening reviewing it, those  
11:07:18 16 are the things that rise -- rise to the surface for me.  
11:07:22 17 So there were clearly things that resonated  
11:07:29 18 with me that I believe the company agrees with, both in  
11:07:32 19 terms of recommendations and in terms of analysis of data.  
11:07:35 20 I would have to spend more than a casual  
11:07:38 21 evening reviewing this and looking at the entire body of  
11:07:42 22 information to give you a more thorough, complete, and  
11:07:46 23 comprehensive answer.  
11:07:47 24 Q Thank you.  
11:07:48 25 A You're welcome.  
11:07:49 26 Q I'd like to highlight some of the things and  
11:07:52 27 have you tell me whether the company agrees that ETS is a  
11:07:59 28 real and substantial threat to child health, causing death  
Vail, Christians & Associates (619)544-8344 259  
11:08:03 1 and suffering throughout the world.  
11:08:04 2 MR. STONE: Same objections to the  
11:08:06 3 documents. Object to the form of the question. Compound,  
11:08:08 4 argumentative, vague and ambiguous.  
11:08:12 5 THE WITNESS: Again, it's impossible for me  
11:08:14 6 to intelligently respond to this, only having in front of  
11:08:19 7 me a partial document, without the information that they  
11:08:23 8 refer to in here that was -- that was presented and is  
11:08:28 9 part of this publication but was not -- was not given to  
11:08:32 10 me.  
11:08:32 11 Not that I could have done it any justice in  
11:08:36 12 reviewing that in an evening, to come back and be able to  
11:08:41 13 say yes -- yes or no, Mr. McGuire.  
11:08:43 14 BY MR. MCGUIRE:  
11:08:43 15 Q Do you have an answer to the question?  
11:08:47 16 MR. STONE: Objection; asked and answered,  
11:08:49 17 argumentative.  
11:08:51 18 THE WITNESS: I can't answer your question  
11:08:55 19 without understanding their basis for this. And their  
11:09:01 20 basis for this is not provided in the information  
11:09:03 21 contained within this document.  
11:09:04 22 BY MR. MCGUIRE:

11:09:04 23 Q Would it be accurate for me to conclude that  
11:09:08 24 Philip Morris, through its PMK, doesn't know one way or  
11:09:12 25 the other, as you sit here today, whether that's a true  
11:09:15 26 statement or not?  
11:09:16 27 MR. STONE: Objection; argumentative,  
11:09:19 28 incomplete, overbroad, compound, lacks foundation, calls  
Vail, Christians & Associates (619)544-8344 260  
11:09:21 1 for speculation. And I reiterate my objections to Exhibit  
11:09:25 2 4018.  
11:09:29 3 THE WITNESS: As I sit here today, in the  
11:09:30 4 absence of having the complete document and having the  
11:09:34 5 complete document analyzed, it's not possible for me to  
11:09:38 6 give a responsible answer to that question.  
11:09:41 7 BY MR. McGUIRE:  
11:09:41 8 Q How much time would it take to -- oh, you  
11:09:46 9 mean the complete document instead of the executive  
11:09:48 10 summary?  
11:09:49 11 A Yes.  
11:09:49 12 Q Okay. Is there some possibility that Philip  
11:09:54 13 Morris might agree with that statement if it had the full  
11:09:57 14 document to review?  
11:09:58 15 MR. STONE: Objection; calls for speculation,  
11:10:00 16 lacks foundation.  
11:10:03 17 THE WITNESS: You know, it's a hypothetical,  
11:10:06 18 but I have already said in terms of what I was able to  
11:10:09 19 peruse through here in the evening, there are pieces of  
11:10:13 20 this that we already agree with and have taken public  
11:10:17 21 positions on. And that is as much information as I had.  
11:10:26 22 Might there be some compelling information  
11:10:29 23 out there that would get Philip Morris to change its  
11:10:33 24 mind? If there's compelling information out there, I  
11:10:36 25 believe that Philip Morris would change its mind if such  
11:10:40 26 information existed.  
11:10:41 27 BY MR. McGUIRE:  
11:10:41 28 Q So as of now, Philip Morris would not agree  
Vail, Christians & Associates (619)544-8344 261  
11:10:46 1 that ETS is a real and substantial threat to child health,  
11:10:50 2 causing death and suffering throughout the world?  
11:10:53 3 MR. STONE: Objection; asked and answered,  
11:10:54 4 argumentative, vague and ambiguous, compound, lacks  
11:10:56 5 foundation, calls for speculation, and this witness can't  
11:11:00 6 testify as to what Philip Morris would or would not do.  
11:11:03 7 It's outside the scope of anything that he has the ability  
11:11:05 8 to respond to.  
11:11:06 9 BY MR. McGUIRE:  
11:11:06 10 Q Is that correct?  
11:11:06 11 A Could you repeat your question, please.  
11:11:11 12 Q Yeah.  
11:11:13 13 Is it correct that, as of now, based on what  
11:11:16 14 you do know as of now about Philip Morris' position or  
11:11:20 15 what they would agree to or not, that they would not agree  
11:11:24 16 that environmental tobacco smoke is a real and substantial  
11:11:29 17 threat to child health, causing death and suffering  
11:11:32 18 throughout the world?  
11:11:33 19 MR. STONE: Same objections.  
11:11:34 20 THE WITNESS: I don't know what Philip Morris  
11:11:37 21 would say to this statement in this document, as it  
11:11:43 22 relates to your question.  
11:11:44 23 BY MR. McGUIRE:  
11:11:44 24 Q Do -- does Philip Morris dispute that recent  
11:11:55 25 evidence demonstrates that environmental tobacco smoke  
11:11:58 26 exposure increases risks of lung cancer and ischemic heart  
11:12:02 27 disease among nonsmoking adults?

11:12:04 28 MR. STONE: Objection; compound, vague and  
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11:12:06 1 ambiguous, lacks foundation, calls for speculation,  
11:12:09 2 assumes facts not in evidence, improper use of the  
11:12:12 3 document to which I've already asserted objections,  
11:12:15 4 including that it's not authentic and is incomplete.

11:12:21 5 THE WITNESS: We're referring to statements  
11:12:23 6 made in this document?

11:12:24 7 BY MR. McGUIRE:

11:12:24 8 Q Yes, sir.

11:12:25 9 A Again, there are statements in here, but the  
11:12:33 10 backup information that they base this on at this meeting  
11:12:37 11 in 1999 was not made available. So I can't -- I can't  
11:12:43 12 answer that for this particular document and the basis for  
11:12:46 13 their -- for their conclusions.

11:12:47 14 Q Did Philip Morris directly or indirectly  
11:12:52 15 provide input to this group?

11:12:57 16 MR. STONE: Objection; asked and answered  
11:12:59 17 about five minutes ago.

11:13:00 18 THE WITNESS: Yeah. You asked me that  
11:13:01 19 question before, and my answer was not that I'm aware of,  
11:13:04 20 I think.

11:13:04 21 BY MR. McGUIRE:

11:13:04 22 Q I added indirectly.

11:13:06 23 A Not that I'm aware of.

11:13:08 24 Q Do you -- have you personally -- do you know  
11:13:14 25 who the people are that authored -- not authored, but sat  
11:13:19 26 on this panel and apparently agreed with the conclusions  
11:13:22 27 reached?

11:13:23 28 MR. STONE: I'm going to object that there's  
Vail, Christians & Associates (619)544-8344 263

11:13:24 1 no evidence that anybody agreed with the conclusions or  
11:13:27 2 disagreed, and there's no evidence in the document as to  
11:13:29 3 who sat on the panel. If you want to ask him about names  
11:13:31 4 of people that are listed, I'll let you ask him about  
11:13:35 5 names. But the question assumes facts not in evidence,  
11:13:37 6 it's argumentative, it's compound.

11:13:39 7 BY MR. McGUIRE:

11:13:39 8 Q Are there participants in this consultation  
11:13:44 9 whose opinions Philip Morris respects as scientists?

11:13:47 10 MR. McGUIRE: Objection; overbroad, vague  
11:13:51 11 and ambiguous, lacks foundation.

11:13:52 12 THE WITNESS: Opinions on what?

11:13:53 13 BY MR. McGUIRE:

11:13:53 14 Q On environmental tobacco smoke and the effect  
11:13:57 15 of environmental tobacco smoke on the health of children  
11:14:00 16 throughout the world.

11:14:01 17 MR. STONE: How is he supposed to know what  
11:14:03 18 those opinions are? I mean, you have a list of 40 people  
11:14:06 19 or something. He's supposed to know all their opinions  
11:14:09 20 and whether they agree or disagree. It's compound.

11:14:12 21 MR. McGUIRE: I think for purposes of my  
11:14:13 22 question, you can assume that they all support this  
11:14:16 23 executive summary.

11:14:16 24 MR. STONE: Really?

11:14:18 25 MR. McGUIRE: Yes.

11:14:18 26 MR. STONE: And if that turns out not to be  
11:14:20 27 true, can we strike this line of questioning?

11:14:22 28 MR. McGUIRE: Sure.

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11:14:23 1 MR. STONE: So stipulated.

11:14:26 2 THE WITNESS: And this relates to people that  
11:14:28 3 I know?



11:14:29 4 BY MR. McGUIRE:  
11:14:29 5 Q Or you're aware of, their reputation.  
11:14:31 6 MR. STONE: Mr. McGuire doesn't really care  
11:14:33 7 whether you know them or are aware of them or anything.  
11:14:37 8 He's just asking an improper question for his own purposes.  
11:14:39 9 You can try to answer as best you can, if you  
11:14:42 10 have it in mind.  
11:14:43 11 THE WITNESS: I don't understand the nature  
11:14:44 12 of the question.  
11:14:45 13 BY MR. McGUIRE:  
11:14:45 14 Q Well, let's see. Jonathon Samet, you respect  
11:14:50 15 him, right?  
11:14:52 16 MR. MILES: Vague.  
11:14:52 17 MR. STONE: Objection; improperly calls for  
11:14:54 18 character testimony.  
11:14:55 19 THE WITNESS: I respect Jonathon Samet as a  
11:15:01 20 scientist.  
11:15:01 21 BY MR. McGUIRE:  
11:15:01 22 Q Okay. He sat on this panel or was one of the  
11:15:04 23 consultants, correct?  
11:15:05 24 A I think so.  
11:15:06 25 Q Yes.  
11:15:07 26 And I think you said yesterday that there was  
11:15:09 27 a noted epidemiologist in Great Britain named Lee.  
11:15:14 28 Do you remember that?  
Vail, Christians & Associates (619)544-8344 265  
11:15:14 1 A Yes.  
11:15:14 2 Q He sat on this panel, didn't he?  
11:15:17 3 A Did he?  
11:15:17 4 Q Yes.  
11:15:18 5 MR. STONE: Objection.  
11:15:19 6 How do you know that?  
11:15:20 7 THE WITNESS: Where --  
11:15:21 8 MR. STONE: How is the witness supposed to  
11:15:22 9 know that, Mr. McGuire?  
11:15:23 10 THE WITNESS: Where is Lee in here?  
11:15:26 11 BY MR. McGUIRE:  
11:15:26 12 Q I believe his name is in this list.  
11:15:28 13 MR. STONE: It is. It's on page 35. His  
11:15:31 14 name is there. What does that mean, that there's a Tony  
11:15:34 15 Lee listed.  
11:15:34 16 THE WITNESS: No, that's a different Lee.  
11:15:36 17 MR. STONE: Well, Mr. McGuire doesn't think  
11:15:38 18 so.  
11:15:38 19 THE WITNESS: Well, Peter Lee is the person  
11:15:40 20 I'm talking about. And this Tony Lee is, I don't believe,  
11:15:46 21 an epidemiologist, and he's a representative of an  
11:15:50 22 anti-tobacco advocacy group.  
11:15:52 23 BY MR. McGUIRE:  
11:15:52 24 Q And --  
11:15:53 25 A So do I know what his opinions are and do I  
11:15:57 26 respect them? I don't have a clue. But I know he's not  
11:16:01 27 the Peter Lee who is the noted epidemiologist in the UK.  
11:16:06 28 Q So that's not the same Lee that you were  
Vail, Christians & Associates (619)544-8344 266  
11:16:09 1 referring to yesterday, then?  
11:16:10 2 A No.  
11:16:17 3 Q Where -- what about Dr. Eskenazi, are you  
11:16:21 4 familiar with her?  
11:16:23 5 A She's from California.  
11:16:24 6 Q Yeah, I know.  
11:16:25 7 A Oh. Okay. I'm familiar with some of her  
11:16:34 8 work. Does she do neuro behavioral? I'm trying to

11:16:41 9 remember if that's what she does.

11:16:42 10 Q Do you have an opinion regarding her

11:16:46 11 credibility as an epidemiologist?

11:16:49 12 A No.

11:16:49 13 MR. STONE: Objection; lacks foundation,

11:16:50 14 calls for speculation.

11:16:52 15 MR. MILES: It's also vague.

11:16:53 16 THE WITNESS: No.

11:16:54 17 BY MR. McGUIRE:

11:16:54 18 Q Dr. Paolo Boffetta.

11:16:57 19 A Yes, I know --

11:16:58 20 MR. STONE: There's no question.

11:16:59 21 BY MR. McGUIRE:

11:16:59 22 Q You know him, right?

11:17:01 23 A Yes.

11:17:01 24 Q And, as a matter of fact, you've -- Philip

11:17:04 25 Morris has cited some of his work in support of some of

11:17:08 26 their positions; is that correct?

11:17:09 27 A Yes.

11:17:10 28 Q Has Dr. Boffetta changed any of the opinions

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11:17:14 1 that he reached, that you rely on?

11:17:17 2 MR. STONE: Objection; lacks foundation,

11:17:18 3 calls for speculation.

11:17:20 4 THE WITNESS: I don't know how to answer it.

11:17:21 5 I mean, I'm not in communication with Dr. Boffetta to be

11:17:27 6 able to answer that question.

11:17:28 7 BY MR. McGUIRE:

11:17:28 8 Q Have you spoken or has Philip Morris

11:17:30 9 communicated with him regarding this executive summary,

11:17:33 10 this exhibit, or the issues in it?

11:17:35 11 A Well, since I've not seen -- seen this before

11:17:37 12 or heard about it before, I have no way of knowing. And,

11:17:43 13 therefore, I can't answer your question.

11:17:46 14 Q Are you aware of Dr. Samet's synthesis, the

11:18:08 15 health effects of tobacco smoke exposure on children?

11:18:12 16 MR. STONE: Objection; vague and ambiguous,

11:18:14 17 lacks foundation.

11:18:16 18 THE WITNESS: I don't know.

11:18:16 19 MR. STONE: If that's a written document, I

11:18:18 20 think the document would speak for itself.

11:18:20 21 THE WITNESS: I'm not sure what you're

11:18:21 22 talking about.

11:18:22 23 BY MR. McGUIRE:

11:18:22 24 Q Are you aware of a document entitled

11:18:27 25 "Association of Inutero or Post Natal Environmental

11:18:32 26 Tobacco Smoke Exposure and Neuro Developmental and

11:18:35 27 Behavioral Problems in Children"?

11:18:37 28 A I know of work in that area. Whether it has

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11:18:41 1 that specific title or not, I'm not sure.

11:18:43 2 Q In this executive summary, were there any

11:19:01 3 statements made when you reviewed it, to the extent that

11:19:05 4 you could, that you can tell me now, as you sit here

11:19:10 5 today, that Philip Morris definitely does not agree with

11:19:14 6 the position stated?

11:19:16 7 MR. STONE: I'm going to object on the

11:19:17 8 grounds that there's no evidence that Philip Morris has

11:19:21 9 reviewed the document and has taken a position on

11:19:23 10 statements in this document one way or the other. This

11:19:25 11 witness lacks foundation to testify with respect to such

11:19:28 12 questions and has not been designated to do so. The

11:19:31 13 question is vague and ambiguous, compound, and overbroad.

11:19:35 14 The document itself is inadmissible as both not  
11:19:39 15 authenticated and incomplete.  
11:19:42 16 You can try to answer, if you can.  
11:19:44 17 THE WITNESS: Given the amount of time and  
11:19:46 18 the incompleteness of the document, what I have conveyed  
11:19:49 19 to you earlier in my answer with respect to what we have  
11:19:53 20 already agreed to in here. Beyond that, it would take --  
11:19:59 21 in terms of disagreement, it would take a more thorough  
11:20:04 22 examination of the entire -- entire document. So I'm not  
11:20:09 23 in a position to answer that question, given the limited  
11:20:12 24 information that I've had to review.  
11:20:13 25 BY MR. McGUIRE:  
11:20:16 26 Q All right. I won't ask you any further  
11:20:22 27 questions on this document, based on that statement.  
11:20:25 28 There is one clause that you may or may not  
Vail, Christians & Associates (619)544-8344 269  
11:20:33 1 have information on, where an estimate is made that a  
11:20:37 2 billion people smoke worldwide.  
11:20:39 3 Does that sound accurate to you?  
11:20:41 4 MR. STONE: Objection; lacks foundation,  
11:20:42 5 calls for speculation.  
11:20:44 6 BY MR. McGUIRE:  
11:20:44 7 Q Actually, they have a thousand million, but I  
11:20:47 8 think that's the same as a billion.  
11:20:48 9 A That's correct.  
11:20:50 10 MR. STONE: And outside the area in which  
11:20:51 11 this witness has been designated to testify.  
11:20:53 12 If you have a view, you can state your view.  
11:20:58 13 THE WITNESS: I used to have an estimate of  
11:21:00 14 that number, but I don't recall with any degree of  
11:21:05 15 precision what that is.  
11:21:06 16 BY MR. McGUIRE:  
11:21:06 17 Q They also estimate that around 700 million  
11:21:10 18 children are exposed to environmental tobacco smoke.  
11:21:15 19 Does that comport with your understanding as  
11:21:18 20 to worldwide exposure, if you have one?  
11:21:21 21 MR. STONE: Same objections.  
11:21:22 22 THE WITNESS: Yeah, the basis for that  
11:21:24 23 decision is contained in a document that's referenced  
11:21:28 24 that's not in here. So I have no way of evaluating that  
11:21:31 25 information.  
11:21:32 26 BY MR. McGUIRE:  
11:21:32 27 Q Do -- do you have an estimate as to how many  
11:21:39 28 children are exposed to environmental tobacco smoke in  
Vail, Christians & Associates (619)544-8344 270  
11:21:42 1 California?  
11:21:44 2 MR. STONE: Same objections, lacks  
11:21:46 3 foundation, calls for speculation.  
11:21:48 4 THE WITNESS: No, I don't.  
11:21:48 5 BY MR. McGUIRE:  
11:21:48 6 Q Is there someone at Philip Morris that would  
11:21:51 7 have an estimate of that statistic?  
11:21:56 8 A For the state of California, it's -- it's  
11:21:59 9 possible. But that would be somebody that either works  
11:22:03 10 for Dr. Solana or is within his reach.  
11:22:05 11 Q And do you know what the source of that  
11:22:12 12 person's information would be?  
11:22:14 13 MR. STONE: Objection; calls for  
11:22:15 14 speculation.  
11:22:16 15 THE WITNESS: No, I don't.  
11:22:16 16 BY MR. McGUIRE:  
11:22:16 17 Q And let's now talk about Exhibit 4019, for  
11:22:37 18 identification, which is a portion of the web's version of

11:22:46 19 the 9th Report on Carcinogens 2000, U.S. Department of  
11:22:51 20 Health and Human Services, Public Health Service and the  
11:22:56 21 National Toxicology Program.  
11:22:57 22 We started into this area yesterday, and you  
11:23:02 23 indicated that you -- I got a partial answer or something  
11:23:07 24 about you were intimately familiar with this particular  
11:23:11 25 report.  
11:23:11 26 Am I accurately --  
11:23:12 27 A Absolutely.  
11:23:13 28 Q Okay. What was your involvement with this  
Vail, Christians & Associates (619)544-8344 271  
11:23:18 1 report?  
11:23:20 2 A When the NTP publicly announced that it was  
11:23:26 3 considering a variety of materials for candidate --  
11:23:31 4 candidate materials for evaluation, they sent out a  
11:23:35 5 notice. That notice found its way to me, either directly  
11:23:42 6 from NTP or from one of my colleagues within Philip Morris.  
11:23:46 7 And based -- based upon that, the scientists  
11:23:51 8 got together. We had a series of discussions. And then I  
11:23:57 9 spoke to an attorney within Philip Morris.  
11:24:04 10 MR. STONE: Don't go into the substance of  
11:24:06 11 the conversation.  
11:24:08 12 THE WITNESS: Relating to the fact that there  
11:24:09 13 was this notice. And they were asking for responses,  
11:24:16 14 scientific responses to these materials, and just to make  
11:24:22 15 them aware that we were looking at this and trying to  
11:24:26 16 consider what kind of a scientific response would be  
11:24:32 17 appropriate for us.  
11:24:33 18 BY MR. McGUIRE:  
11:24:33 19 Q Okay. Did you eventually -- did Philip  
11:24:41 20 Morris eventually make a response or give a response?  
11:24:44 21 A We gave several written responses and two  
11:24:48 22 oral presentation responses.  
11:24:51 23 Q Who did you give the oral presentation to?  
11:24:53 24 A To the NTP. Once in Research Triangle Park  
11:25:01 25 in North Carolina before the chairman and members of  
11:25:05 26 committee, and once in -- and we talked about this  
11:25:09 27 yesterday. Once in Rockville, Maryland before another  
11:25:16 28 chairman and another part of that committee process.  
Vail, Christians & Associates (619)544-8344 272  
11:25:19 1 There were several committees that review this  
11:25:23 2 information.  
11:25:23 3 And both of those meetings were public, and  
11:25:27 4 both of those meetings, the materials that were presented  
11:25:32 5 were publicly -- publicly available. And at least -- and  
11:25:40 6 maybe in both cases. But at least in the case of the  
11:25:43 7 Rockville meeting, there was a transcript of the  
11:25:46 8 presentation, much like Mrs. Smith is doing -- is doing  
11:25:52 9 now. I'm not sure whether there was such a transcript in  
11:25:57 10 the meeting held at Research Triangle Park. It was not  
11:26:01 11 limited to ETS. It covered areas that people were  
11:26:07 12 interested in, amongst the candidate materials that they  
11:26:10 13 were reviewing.  
11:26:10 14 Q On the second -- well, the substance -- the  
11:26:24 15 substances that are profiled, obviously, include  
11:26:28 16 environmental tobacco smoke but a number of other  
11:26:34 17 substances, agents, or mixtures.  
11:26:38 18 Which of those that are listed, to your  
11:26:39 19 knowledge, are also included in environmental tobacco  
11:26:45 20 smoke, if any?  
11:26:49 21 MR. STONE: Objection; improperly calls for  
11:26:50 22 opinion testimony, outside the area in which this witness  
11:26:53 23 has been designated to testify, compound.

11:26:57 24 THE WITNESS: So you're looking at 'B' on  
11:26:58 25 page 2 of 6?  
11:27:00 26 BY MR. McGUIRE:  
11:27:00 27 Q It starts on page 1 of 6.  
11:27:02 28 A Is that where you want -- is that where you  
Vail, Christians & Associates (619)544-8344 273  
11:27:05 1 want me to start?  
11:27:06 2 Q Yes. Aflatoxins.  
11:27:08 3 For example, I think 1,3- Butadiene is one  
11:27:13 4 substance of environmental tobacco smoke, isn't it?  
11:27:17 5 A Okay. So you want me to start from here?  
11:27:21 6 Q Yes.  
11:27:22 7 A Okay. That's fine.  
11:27:23 8 From looking at this list, page 1 of 6,  
11:27:25 9 substances that have been reported in environmental  
11:27:28 10 tobacco smoke would include 4-Aminobiphenyl, some  
11:27:39 11 arsenical compounds, Benzene, 1,3-Butadiene, Cadmium.  
11:27:52 12 There's Chromium, but it's unknown whether  
11:27:56 13 it's Hexavalent or not.  
11:27:58 14 Ethylene Oxide, 2-Naphthylamine, Radon,  
11:28:15 15 Vinyl Chloride, Acetaldehyde, Acrylonitrile. There are  
11:28:25 16 some quinones. I don't know whether 2-Aminoanthraquinone  
11:28:30 17 is there. It could very well be. So the other  
11:28:33 18 anthraquinones might be there.  
11:28:37 19 There have been rare reports of Beryllium in  
11:28:45 20 smoke, but that's only been in certain kinds of tobaccos.  
11:28:49 21 And that's outside of the United States.  
11:28:50 22 I believe p-Cresidine. I'm on page 3 of 6  
11:29:09 23 now. Formaldehyde. There are Furans in smoke.  
11:29:37 24 Hydrazines have been reported, but the analytical  
11:29:43 25 methodology is basically invalid. So I don't know whether  
11:29:48 26 it's there or not. Nor do I believe anybody else does.  
11:29:52 27 Know it, in the sense of having valid  
11:29:59 28 analytical data that would support it.  
Vail, Christians & Associates (619)544-8344 274  
11:30:02 1 Isoprene -- I'm on page 4 of 6 -- is found in  
11:30:09 2 environmental tobacco smoke. There are Nickel compounds  
11:30:14 3 that have been reported. And when I'm talking about  
11:30:19 4 these -- these things, this data is primarily derived from  
11:30:26 5 INBIFO, which, as I said earlier, has published the most  
11:30:31 6 exhaustive chemical analysis of our room-aged sidestream,  
11:30:37 7 which is an ETS surrogate. To my knowledge, nobody else  
11:30:40 8 has reported many of the things that I'm talking about  
11:30:42 9 that we have -- we have reported.  
11:30:43 10 There are Nitroarenes. I'm not sure whether  
11:30:53 11 2-Nitropropane is in there. There are pyrrolidines and  
11:31:06 12 piperidines and N-Nitrosomornicotine. And I'm sorry. I  
11:31:13 13 missed one. NNK, up on the top, the  
11:31:18 14 4-(N-Nitrosomethylamino)-1-(3-pyridyl)-1-butanone.  
11:31:18 15 Sarcosine. Polycyclic Aromatic  
11:31:39 16 Hydrocarbons. I don't know if all of these have been  
11:31:45 17 determined, but it wouldn't surprise me if one looked in  
11:31:49 18 the right -- under the right situations, you might be able  
11:31:54 19 to find -- find it.  
11:31:56 20 Q When you say I don't know if any of these,  
11:31:59 21 you mean of the 15 listed?  
11:32:00 22 A We have identified some, but I'm not sure if  
11:32:03 23 all of them have been --  
11:32:05 24 Q Okay. Thank you.  
11:32:07 25 A -- identified. Oh, you're quite welcome.  
11:32:09 26 I may have missed one or more, but those are  
11:32:28 27 the ones that I'm aware of. Those that I'm aware of are  
11:32:38 28 primarily those that we reported in our publication.

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11:32:41 1 Forgive me. Nicotine. I'm sorry. But  
 11:32:47 2 that's not on this list. Sorry. Yet. Okay. Okay.  
 11:32:53 3 That's it.  
 11:32:54 4 Q Has Philip Morris concluded that nicotine is  
 11:33:09 5 a carcinogen?  
 11:33:10 6 A No. Nor am I aware has anybody else.  
 11:33:15 7 Q Turning to the portion of this exhibit that  
 11:33:46 8 deals specifically with environmental tobacco smoke, which  
 11:33:50 9 is at the end of the summary.  
 11:33:57 10 MR. STONE: I object on the grounds that this  
 11:33:59 11 document is incomplete, not authentic. I'd like to just  
 11:34:04 12 have a running objection to questions about this document  
 11:34:07 13 on that ground, if I could.  
 11:34:09 14 MR. McGUIRE: Yes.  
 11:34:12 15 MR. RICHARDSON: I join in that objection.  
 11:34:14 16 MR. MILES: Join.  
 11:34:16 17 Do we have the same stipulation that our  
 11:34:17 18 joinder is running as well?  
 11:34:19 19 MR. McGUIRE: On this document, yes.  
 11:34:23 20 MR. LENDRUM: I join in that objection as  
 11:34:25 21 well.  
 11:34:25 22 THE WITNESS: So the header for this,  
 11:34:27 23 Mr. McGuire?  
 11:34:28 24 BY MR. McGUIRE:  
 11:34:28 25 Q "Environmental Tobacco Smoke."  
 11:34:30 26 A Is the "First Listed in the Ninth Report"?  
 11:34:31 27 Q Yes.  
 11:34:36 28 A Yes, sir.

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11:34:36 1 Q There is a definition of ETS that says  
 11:34:41 2 "Additional information relevant to carcinogenesis or  
 11:34:46 3 possible mechanisms of carcinogenesis."  
 11:34:51 4 A Yes.  
 11:34:52 5 Q Would you concur with the accuracy and  
 11:34:54 6 completeness of that definition?  
 11:34:56 7 MR. STONE: I think the definition really is  
 11:34:58 8 on the next page under the heading "Properties," to the  
 11:35:01 9 extent it's, I think, more precise. You can refer him to  
 11:35:05 10 whichever one, but I think that one probably -- that also  
 11:35:07 11 has citations to the sources for what they have in mind.  
 11:35:10 12 BY MR. McGUIRE:  
 11:35:10 13 Q Would you agree?  
 11:35:12 14 A With the definition?  
 11:35:14 15 Q That a better and more complete definition  
 11:35:17 16 would be under the definition that appears under  
 11:35:19 17 "Properties" rather than the ETS as a complex mixture of  
 11:35:24 18 gases, et cetera --  
 11:35:26 19 A Well --  
 11:35:27 20 Q -- or both of them together?  
 11:35:29 21 A Well, they satisfy different conditions. But  
 11:35:32 22 if you're asking me what ETS is, which one more accurately  
 11:35:37 23 captures -- captures that, I think that under the  
 11:35:42 24 "Properties," that sentence that's there is, I think,  
 11:35:45 25 pretty much what I said when you asked me that question  
 11:35:48 26 yesterday.  
 11:35:50 27 Q Is sidestream smoke more toxic or  
 11:35:54 28 carcinogenic than mainstream smoke?

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11:35:56 1 MR. STONE: Objection; compound, overbroad,  
 11:35:59 2 improperly calls for opinion testimony.  
 11:36:02 3 THE WITNESS: The studies that have been done  
 11:36:04 4 based on a per milligram basis of condensate, done in

11:36:11 5 mouse skin painting, where you apply the condensative  
11:36:15 6 smoke repeatedly on the backs of mice, demonstrate that  
11:36:19 7 fresh sidestream on that basis, under those conditions, is  
11:36:23 8 more carcinogenic.  
11:36:27 9 BY MR. McGUIRE:  
11:36:27 10 Q Did -- was that determination made as a  
11:36:31 11 result of research done by Philip Morris scientists?  
11:36:34 12 A That research was determined before Philip  
11:36:37 13 Morris did it, but INBIFO basically carried out an  
11:36:43 14 experiment in its own laboratories and basically confirmed  
11:36:47 15 what had already been -- what had already been published.  
11:36:49 16 Q Who was it that first used mouse skin  
11:36:53 17 paintings to arrive at the conclusion that sidestream  
11:36:57 18 smoke was more carcinogenic than mainstream, if you know?  
11:37:03 19 MR. MILES: Object to the characterization.  
11:37:05 20 Misstates his testimony.  
11:37:11 21 THE WITNESS: Well, to the extent we're  
11:37:14 22 talking about mouse skin painting and fresh sidestream  
11:37:18 23 smoke, a name that comes to my mind is Deitrich Hoffmann,  
11:37:22 24 but I could be wrong.  
11:37:24 25 VIDEOGRAPHER: Excuse me, Counsel. I'm going  
11:37:26 26 to need to do a tape change in two minutes.  
11:37:29 27 MR. McGUIRE: Well, we might as well just  
11:37:38 28 wait for the tape change.  
11:37:40 1 Vail, Christians & Associates (619)544-8344 278  
11:37:42 2 VIDEOGRAPHER: This concludes Tape 1 of the  
11:37:44 3 deposition. The time is 11:38.  
11:48:17 4 (Recess.)  
11:48:17 4 VIDEOGRAPHER: We are back on the record.  
11:48:32 5 This begins Tape 2 of Volume II, deposition of Richard  
11:48:36 6 Carchman, Ph.D. And the time is 11:49.  
11:48:41 7 BY MR. McGUIRE:  
11:48:41 8 Q Dr. Carchman, do -- does Philip Morris agree  
11:48:47 9 that sidestream smoke contains at least 250 chemicals  
11:48:53 10 known to be toxic or carcinogenic?  
11:48:55 11 MR. STONE: Objection; assumes facts not in  
11:48:57 12 evidence; namely, that there's a Philip Morris belief on  
11:49:03 13 that or a position on that. Lacks foundation, calls for  
11:49:07 14 speculation.  
11:49:08 15 You can answer as best you know.  
11:49:11 16 THE WITNESS: As I said earlier, the only  
11:49:13 17 things that had been identified in -- in ETS are the ones  
11:49:22 18 that we have -- we have published on, and the expectation  
11:49:26 19 is that if it's in ETS, it's also in sidestream smoke.  
11:49:33 20 And that number is something around 50 -- 50 materials.  
11:49:38 21 As to whether they're toxic or not is a scientifically  
11:49:44 22 inappropriate proposition in the absence of having a  
11:49:50 23 context with regard to concentration and exposure.  
11:49:53 24 BY MR. McGUIRE:  
11:50:04 25 Q On the next page, does Philip Morris agree  
11:50:22 26 with the statement that there are no known uses of  
11:50:25 27 environmental tobacco smoke?  
11:50:29 28 MR. STONE: Same objection to the use of the  
11:50:31 1 Vail, Christians & Associates (619)544-8344 279  
11:50:34 2 document.  
11:50:34 2 Can you point to where that statement is?  
11:50:36 3 MR. McGUIRE: It's on the next page.  
11:50:37 4 MR. STONE: Can you just tell me how far  
11:50:39 5 down.  
11:50:39 6 MR. McGUIRE: It's under "Use." It's the  
11:50:41 7 one-liner.  
11:50:42 8 THE WITNESS: So it's on the same page as  
11:50:44 9 "Properties."

11:50:44 10 MR. STONE: Oh. It's on the same page.  
11:50:46 11 THE WITNESS: As "Properties." I'm sorry.  
11:50:48 12 MR. STONE: Objection; vague and ambiguous,  
11:50:54 13 lacks foundation.  
11:50:54 14 THE WITNESS: I'm not aware of any -- of any  
11:50:59 15 use as I might be thinking of it for environmental tobacco  
11:51:02 16 smoke.  
11:51:03 17 BY MR. McGUIRE:  
11:51:03 18 Q Does -- when Philip Morris sells a pack of  
11:51:06 19 cigarettes, do they intend for the purchaser to smoke  
11:51:09 20 them?  
11:51:10 21 MR. STONE: Objection; outside of scope on  
11:51:13 22 which this witness has been designated to testify, lacks  
11:51:16 23 foundation, calls for speculation, assumes facts not in  
11:51:18 24 evidence; namely, that there is such a thing as a  
11:51:23 25 corporation having an intent. It's vague and ambiguous.  
11:51:27 26 You can answer as best you know.  
11:51:30 27 THE WITNESS: I personally believe that's the  
11:51:32 28 intent.  
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11:51:33 1 BY MR. McGUIRE:  
11:51:33 2 Q Okay. Was there a debate at one point in  
11:51:38 3 time in Philip Morris as to whether they were in the  
11:51:42 4 pleasure business or the tobacco business?  
11:51:44 5 A There were discussions amongst some of the  
11:51:50 6 scientists about whether one of the reasons that people  
11:51:57 7 smoked cigarettes, pipes, cigars, cigarettes, drink port  
11:52:03 8 or bourbon, or do other things, whether they were all --  
11:52:11 9 that people did it because they were pleasurable.  
11:52:14 10 And there were some -- some scientists in  
11:52:18 11 Philip Morris that actually, for a period of time,  
11:52:23 12 supported some efforts with a group that actually did  
11:52:31 13 that. And I think at least the main principal in that  
11:52:37 14 published -- published on that. But I would say those  
11:52:44 15 scientists were in the minority, and eventually, Philip  
11:52:50 16 Morris stopped contributing to those efforts.  
11:52:55 17 Q Could you -- you used a lot of "its" and  
11:53:03 18 "thats." When you say they -- for example, "I would say  
11:53:06 19 those scientists were in the minority, and eventually,  
11:53:09 20 Philip Morris stopped contributing to those efforts."  
11:53:12 21 What efforts, if you would, please?  
11:53:15 22 A Okay. First of all, in Neuchatel -- and this  
11:53:19 23 is before my involvement with Neuchatel. So this is prior  
11:53:24 24 to '93. There was a scientist in Neuchatel, Dr. Peter  
11:53:34 25 Martin, who was interested and I believe had funded some  
11:53:41 26 work carried out by a Dr. David Warburton in the UK. And  
11:53:48 27 the organization -- the acronym is or was ARISE,  
11:53:53 28 A-R-I-S-E. I can't tell you what all the little letters  
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11:53:59 1 mean, other than the last two, the 'S' and 'E,' I believe,  
11:54:05 2 are substance enjoyment.  
11:54:08 3 And Dr. Martin had provided funds through --  
11:54:15 4 he was a Philip Morris employee, so they were Philip  
11:54:18 5 Morris funds for that. I would say once other scientists  
11:54:21 6 in Philip Morris had a better understanding of what was  
11:54:25 7 going on, we basically stopped funding those efforts. I  
11:54:32 8 can't give you any more specificity with regard to dates.  
11:54:38 9 If you want to know the names of the other scientists, I  
11:54:41 10 can probably recall some of them. Myself being one.  
11:54:44 11 Q Okay. No. What I'd like you to do, though,  
11:54:48 12 is to give me a little bit more in terms of those  
11:54:51 13 efforts.  
11:54:51 14 As I am understanding what you're saying is



11:54:53 15 that Dr. Warburton was doing research into whether or not  
11:55:01 16 cigarette smoking was providing some pleasurable aspect or  
11:55:07 17 I'll call it psychopharmacological property or need.  
11:55:12 18 Is that what you meant by that?  
11:55:14 19 A I don't -- I don't -- I don't think so.  
11:55:17 20 Q Explain to me, then, what your answer meant,  
11:55:21 21 please.  
11:55:21 22 A Okay. What Dr. Warburton was doing with this  
11:55:25 23 ARISE program or ARISE project or society or whatever it  
11:55:29 24 actually was or is, if it still exists, was to try to put  
11:55:35 25 in context why people do certain things, why they eat  
11:55:38 26 certain foods; why they smoke certain kinds of products,  
11:55:42 27 not limited to tobacco; why they consume certain kinds of  
11:55:46 28 beverages, whether it's coffee, tea, milk, alcohol. And  
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11:55:54 1 there is what he would call a benefit, and that benefit is  
11:55:59 2 pleasure. It makes them comport better with their  
11:56:04 3 environments. It makes -- it makes them feel better in  
11:56:09 4 body, some positive -- some positive attributes. I think  
11:56:15 5 that's what -- what he meant by -- by that.  
11:56:22 6 Q On the last page of Exhibit 4019, there are a  
11:56:37 7 number of citations and references to relative risks  
11:56:47 8 assessments in different areas.  
11:56:50 9 Are any of those particular studies that are  
11:56:54 10 mentioned there, studies that you are aware of and can  
11:57:00 11 advise me whether Philip Morris agrees with the  
11:57:03 12 conclusions of the listed studies?  
11:57:06 13 MR. STONE: I think these are -- just so I'm  
11:57:09 14 clear, I don't think these are relative risk references.  
11:57:12 15 THE WITNESS: I can't -- I can't --  
11:57:14 16 BY MR. McGUIRE:  
11:57:14 17 Q I'm sorry. There's exposure -- there are  
11:57:17 18 exposure levels. Let's work our way down.  
11:57:19 19 A Uh-huh.  
11:57:20 20 Q There's a study, Millar, 1991, which talks  
11:57:27 21 about estimating measures of RSP and citing Repace and  
11:57:36 22 Lowrey in 1980 and '82.  
11:57:40 23 Without getting this compound, first of all,  
11:57:42 24 the Millar article, are you familiar with that?  
11:57:44 25 A Yes.  
11:57:44 26 Q Is that an article that you concur -- or  
11:57:46 27 Philip Morris concurs with the conclusion of?  
11:57:49 28 MR. STONE: Objection; lacks foundation,  
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11:57:50 1 calls for speculation.  
11:57:51 2 THE WITNESS: There's -- they are not --  
11:57:53 3 Millar is not using any original data. He's basically  
11:57:56 4 citing some work that Mr. Repace and Dr. Lowrey published  
11:58:06 5 20 years ago.  
11:58:07 6 BY MR. McGUIRE:  
11:58:07 7 Q Okay. And do you have a -- does Philip  
11:58:11 8 Morris agree with whatever conclusions Millar reached?  
11:58:14 9 MR. STONE: Objection; vague and ambiguous,  
11:58:15 10 assumes facts not in evidence, lacks foundation, including  
11:58:18 11 whether or not there's any Philip Morris position on these  
11:58:20 12 conclusions, if there are any.  
11:58:23 13 THE WITNESS: I don't know whether Philip  
11:58:24 14 Morris agrees with the '91 -- or disagrees with the '91  
11:58:29 15 study in which data from 20 years ago is represented as an  
11:58:36 16 estimate of respirable particles. I don't believe that  
11:58:44 17 Philip Morris had any information in 19- -- in 1980, other  
11:58:47 18 than to say that RSP, respirable particles, is not a  
11:58:55 19 specific marker for environmental tobacco smoke.

11:58:58 20 And so whatever this measurement is, 0.242  
11:59:02 21 micrograms per cubic meter of RSP, you don't know from  
11:59:10 22 these studies taken 20 years ago what proportion, if any,  
11:59:14 23 of this ETS is contributing to. And I think it was true  
11:59:20 24 then and it's true now. There are better ways of  
11:59:22 25 estimating ETS than RSP.  
11:59:26 26 This may have been appropriate at the time in  
11:59:31 27 1980, but it's inappropriate to use a 1980 study using RSP  
11:59:37 28 for a report published in the last two years.  
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11:59:40 1 BY MR. McGUIRE:  
11:59:41 2 Q Is that -- does your answer include any  
11:59:46 3 criticism that Philip Morris has of the Repace and Lowrey  
11:59:51 4 articles that are cited?  
11:59:53 5 MR. STONE: Objection; lacks foundation as to  
11:59:54 6 what it means when you use the phrase Philip Morris  
11:59:57 7 criticism, assumes facts not in evidence, is vague and  
11:59:59 8 ambiguous, is overbroad and compound.  
12:00:03 9 THE WITNESS: I think my response is not  
12:00:05 10 limited to, but at this point, without having those papers  
12:00:10 11 in front of me, Philip Morris' criticism would be --  
12:00:14 12 criticism of the Philip Morris scientists to this work  
12:00:17 13 would be the same as the ones I've just stated, as to the  
12:00:22 14 lack of specificity with regard to RSP, in the absence of  
12:00:25 15 having other markers that would provide greater  
12:00:29 16 specificity as to what that represents.  
12:00:32 17 BY MR. McGUIRE:  
12:00:33 18 Q What's the range or the estimated range as to  
12:00:36 19 what proportion of RS -- of respirable suspended particles  
12:00:44 20 are related to ETS?  
12:00:46 21 MR. STONE: Objection; lacks foundation,  
12:00:47 22 calls for speculation, incomplete hypothetical without all  
12:00:50 23 the elements, improperly calls for opinion testimony.  
12:00:53 24 THE WITNESS: Yeah. That has actually been  
12:00:56 25 discussed and debated in the literature for the last --  
12:01:02 26 the last 20 years, and there have been estimates, and then  
12:01:07 27 there have been actual experiments.  
12:01:09 28 All I can say at this -- at this point in  
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12:01:11 1 time, it varies as a function of the environment and  
12:01:15 2 what's going on in the environment.  
12:01:17 3 If you're in a smoky bar and you're measuring  
12:01:22 4 RSP, it is likely that the ETS component of that is going  
12:01:30 5 to be significant, but that's something you have to  
12:01:34 6 determine from environment to environment.  
12:01:36 7 Though, some people have tried to normalize  
12:01:40 8 that and be able to generalize, I don't believe the data  
12:01:43 9 allows you to do that.  
12:01:44 10 BY MR. McGUIRE:  
12:01:44 11 Q Have you -- are you aware of any work that  
12:01:50 12 has estimated that at about 78 percent?  
12:01:52 13 A It's an interesting number you --  
12:01:58 14 Q I just kind of pulled that out of the air.  
12:02:00 15 A Well, you're very good. And, again, there  
12:02:03 16 have been a wide variety of estimates from that number,  
12:02:05 17 above that number, to below that number. But the estimate  
12:02:09 18 is so dependent upon the context that rather than rely on  
12:02:15 19 an estimate, one should rely on valid experimental data.  
12:02:21 20 And valid experimental data that has been published in the  
12:02:25 21 peer-reviewed literature basically shows a wide variety of  
12:02:29 22 percentages of the ETS contribution, depending on the  
12:02:33 23 conditions.  
12:02:33 24 Q I've seen reference to measurements of

12:02:44 25 constituents in ETS that are divided into a gas phase and  
12:02:51 26 into a particulate phase.  
12:02:53 27 Is that something you're familiar with?  
12:02:54 28 A Very much so, yes.  
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12:02:56 1 Q Okay. Is -- has Philip Morris done any work  
12:03:01 2 with respect to which is the more carcinogenic, the gas  
12:03:08 3 phase or the particulate phase?  
12:03:09 4 MR. STONE: Objection; vague and ambiguous  
12:03:10 5 with respect to the phrase "more carcinogenic," lacks  
12:03:14 6 foundation in this context.  
12:03:16 7 THE WITNESS: The answer to your question  
12:03:18 8 comes in several parts, part of which we've already  
12:03:23 9 discussed, and that was the mouse skin painting with  
12:03:25 10 sidestream paint in which condensate is used. So when I  
12:03:32 11 talk about condensate, I'm talking about the particulate  
12:03:36 12 phase. The mouse skin painting, therefore, would exclude  
12:03:39 13 from examination the gas phase.  
12:03:42 14 So the particle phase of tobacco smoke,  
12:03:45 15 whether it's mainstream smoke or fresh sidestream smoke is  
12:03:50 16 carcinogenic in mouse skin painting. And as we indicated  
12:03:56 17 before, that's been published, and we have our own  
12:03:59 18 internal data that supports those observations and in that  
12:04:04 19 particular system.  
12:04:06 20 With regard to the gas phase components, I'm  
12:04:12 21 aware of only one laboratory that has any information that  
12:04:19 22 allows you to guess as to the tumorigenicity, if you will,  
12:04:26 23 of an ETS-like aerosol. And that's Dr. Witschi's --  
12:04:34 24 Witschi's work, which seems to -- one has to juxtapose  
12:04:41 25 that with the mouse skin painting work, because as part of  
12:04:45 26 Dr. Witschi's studies, he found the activities solely in  
12:04:49 27 the gas phase. The published mouse skin painting  
12:04:53 28 basically says there's carcinogenic activity in the  
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12:04:56 1 particulate phase. And so somehow, these what would  
12:05:03 2 appear to be discrepancies, appear to be discrepancies but  
12:05:08 3 they're different systems, needs to be -- needs to be  
12:05:13 4 resolved.  
12:05:14 5 BY MR. McGUIRE:  
12:05:14 6 Q When does the gas phase end and the  
12:05:16 7 particulate phase begin?  
12:05:18 8 MR. STONE: Objection; vague and ambiguous,  
12:05:20 9 improperly calls for opinion testimony.  
12:05:23 10 THE WITNESS: Begins? I'm not sure I  
12:05:24 11 understand by "begins."  
12:05:26 12 BY MR. McGUIRE:  
12:05:26 13 Q Well, does the gas phase of ETS begin with  
12:05:29 14 the sidestream smoke and the exhaled mainstream smoke,  
12:05:35 15 leaving both the cigarette, on the former, and the  
12:05:39 16 smoker's lungs, on the latter?  
12:05:41 17 A Let me --  
12:05:42 18 MR. STONE: Objection; vague and ambiguous.  
12:05:43 19 THE WITNESS: Let me try to answer.  
12:05:44 20 Tobacco smoke aerosol, per se, is composed of  
12:05:49 21 multiple phases. Two of them are the ones you've  
12:05:52 22 described: particles and gas phase. Sidestream smoke has  
12:05:58 23 a particle phase and a gas phase. And that's the major  
12:06:03 24 contributor to environmental tobacco smoke.  
12:06:07 25 And so when you're talking about tobacco  
12:06:10 26 smoke as it's generated, these kinds of tobacco aerosols  
12:06:19 27 are created. So as soon as you start to combust, burn  
12:06:27 28 tobacco, you end up with at least those two components.  
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12:06:30 1 BY MR. McGUIRE:  
12:06:30 2 Q And so they're existing simultaneously; is  
12:06:33 3 that correct?  
12:06:33 4 A Yes.  
12:06:33 5 Q Does -- do humans ingest the particulate  
12:06:51 6 phase of sidestream smoke?  
12:06:52 7 MR. STONE: Objection; vague and ambiguous,  
12:06:54 8 incomplete hypothetical without all the elements,  
12:06:56 9 improperly calls for opinion testimony.  
12:07:01 10 THE WITNESS: I don't know if you mean ingest  
12:07:02 11 or inhale.  
12:07:03 12 BY MR. McGUIRE:  
12:07:03 13 Q I meant ingest.  
12:07:05 14 MR. STONE: Same objections.  
12:07:06 15 THE WITNESS: Generally speaking, it's hard  
12:07:09 16 to observe people licking themselves or other structures  
12:07:15 17 in the environment. That would be one way of ingesting  
12:07:21 18 it.  
12:07:22 19 Another way of ingesting it would be to eat  
12:07:25 20 or drink food that had been in an environment in which ETS  
12:07:30 21 was in, and in which case, I believe you probably could,  
12:07:42 22 if you looked, find evidence for such an event.  
12:07:47 23 BY MR. McGUIRE:  
12:07:49 24 Q Is there any reason that that would not  
12:07:51 25 occur, that as the particulates settle, they would settle  
12:07:54 26 on a cookie and a child comes in and takes the cookie and  
12:07:58 27 eats the cookie?  
12:07:59 28 MR. STONE: Same objections.  
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12:08:00 1 BY MR. McGUIRE:  
12:08:00 2 Q That doesn't seem too farfetched from the  
12:08:03 3 real world, does it?  
12:08:04 4 MR. STONE: Same objections. Also  
12:08:06 5 argumentative.  
12:08:06 6 THE WITNESS: I think that's a possibility.  
12:08:08 7 BY MR. McGUIRE:  
12:08:08 8 Q Your rat studies that are ongoing, do they  
12:08:10 9 account for the ingest of particulate phases in the  
12:08:13 10 environment by the rats, or are they nose fed only?  
12:08:16 11 A These -- these are nose-only exposed.  
12:08:20 12 Q I'm sorry. I said nose fed. I meant nose  
12:08:25 13 only.  
12:08:25 14 A Yes.  
12:08:25 15 Q Is there any adjustment meant -- excuse me.  
12:08:29 16 Is there any adjustment made in these studies  
12:08:31 17 for the lack of contact with the ingestion of particulate  
12:08:38 18 matter?  
12:08:38 19 A We examined this question as part of our  
12:08:42 20 development of this lifetime study where we looked at  
12:08:45 21 whole body exposure versus nose only exposure, looking at  
12:08:50 22 biomarkers of exposure and some biomarkers of effect. And  
12:08:55 23 consistent with what other people have reported, with  
12:09:00 24 regard to biomarkers of exposure, ingestion in animals,  
12:09:09 25 whether they preen themselves or they eat contaminated  
12:09:14 26 food or the watering system somehow is not restricted so  
12:09:18 27 it wouldn't be contaminated, you have what I would call if  
12:09:26 28 not invalid, so imprecise measures of exposure as to make  
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12:09:32 1 it difficult to figure out what the animal has actually  
12:09:36 2 been exposed to.  
12:09:37 3 And there have been published reports -- let  
12:09:40 4 me see. James Bond, I think he's currently at CIT in  
12:09:45 5 Research Triangle, published some very nice work on

12:09:49 6 tobacco smoke, head only and whole body, and basically --  
12:09:56 7 basically concluded that in terms of exposure and  
12:10:01 8 dosimetry and looking at biomarkers for effect as an  
12:10:05 9 additional parameter, he did not recommend that as an  
12:10:09 10 approach for exposure with regard to tobacco smoke. And  
12:10:13 11 that's consistent with our preliminary work and consistent  
12:10:16 12 with what other people have published.

12:10:18 13 And if I might add, one of the unfortunate  
12:10:30 14 consequences of whole body exposure is that when the  
12:10:34 15 animals are exposed to a combustion product, whether it's  
12:10:38 16 diesel engine exhaust or tobacco smoke, they tend to  
12:10:42 17 filter the material through their fur. They'll stick  
12:10:48 18 their nose in either a neighbor's armpit or in their own  
12:10:52 19 fur to somehow reduce -- reduce the exposure.

12:10:55 20 And that's another confounder that has been  
12:11:02 21 observed over the last 25 years.

12:11:04 22 Q How have you dealt with that in your ongoing,  
12:11:10 23 long-term rat study?

12:11:13 24 A The -- when we did this study and concluded  
12:11:19 25 it was going to be a nose-only study, as I said before, we  
12:11:22 26 had done some other groups that included side by side,  
12:11:26 27 nose only, and whole -- and whole body. And from a  
12:11:31 28 scientific perspective, we were trying to make sure that

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12:11:34 1 the concentration that the rat was seeing, we could get at  
12:11:42 2 the dose that you would have in the lungs, which was the  
12:11:44 3 primary target that we were -- we are interested in.

12:11:48 4 And the only way you can do that is by  
12:11:53 5 setting the parameters, the window such that that's what  
12:11:56 6 you're looking at. When you talk about ingestion, you're  
12:11:59 7 talking about a pathway for these materials that has not  
12:12:04 8 been well studied, and the data, such as it is, would  
12:12:09 9 suggest that you get a significant inactivation in the  
12:12:14 10 stomach of all of the relevant or materials that people --  
12:12:19 11 people are concerned about.

12:12:21 12 And so if you're talking about lung cancer,  
12:12:24 13 the appropriate route of exposure is inhalation. The  
12:12:28 14 appropriate target organ is the lung, and you're trying to  
12:12:32 15 avoid introducing other variables that will compromise  
12:12:38 16 and/or complicate your interpretation of whatever  
12:12:40 17 information you get.

12:12:41 18 So we looked at it. We thought about it. We  
12:12:44 19 made our decision based on the facts that I've -- I've  
12:12:48 20 just given. And that's why we did what we did the way we  
12:12:51 21 did it.

12:12:52 22 Q These rats that you're studying or studied,  
12:12:57 23 do they preen?

12:13:00 24 A They're -- in the exposure chamber, the path  
12:13:08 25 of aerosol is in a column, and their noses protrude into  
12:13:16 26 that column. That's all that is exposed is the nose. And  
12:13:22 27 preening is a behavior that rodents -- rodents do. But  
12:13:30 28 the only part of the animal that's exposed is the nose.

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12:13:34 1 Q Do they -- are they able to lick their own  
12:13:37 2 noses?

12:13:39 3 A I have never observed that, but I would not  
12:13:42 4 be surprised.

12:13:43 5 Q Have you observed if any of the rats that you  
12:13:48 6 studied attack and/or disable or kill other rats in the  
12:13:54 7 study?

12:13:55 8 A These rats are housed in such a way as that  
12:13:59 9 doesn't -- that doesn't happen. These rats are  
12:14:04 10 individually identified by microchip technology. So from

12:14:07 11 a telemetry point of view, everything about them is  
12:14:11 12 monitored either electronically and/or -- and/or visually  
12:14:17 13 on a daily basis. So I'm not aware of any data where that  
12:14:25 14 happens. And if it does, within the reports of INBIFO,  
12:14:30 15 they will note specifically which rats and what group  
12:14:34 16 exhibited some kind of -- some kind of behavior. But all  
12:14:38 17 of that would be -- would be noted, dated, and signed as  
12:14:44 18 part of good laboratory practices.

12:14:46 19 Q What is the WRA?  
12:14:57 20 MR. STONE: Objection; vague and ambiguous,  
12:14:58 21 calls for speculation.  
12:14:59 22 THE WITNESS: Can you give me a little bit  
12:15:03 23 more context.  
12:15:04 24 BY MR. McGUIRE:

12:15:04 25 Q Yeah. They have to do with the WSA teams.  
12:15:08 26 A Oh, okay. So it's a Philip Morris -- if it's  
12:15:11 27 a Philip Morris organization.  
12:15:13 28 Q You tell me. I don't know.  
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12:15:14 1 A Well, WSA is an acronym for Worldwide  
12:15:18 2 Scientific Affairs.  
12:15:19 3 Q Okay.  
12:15:20 4 A If we're talking about the same WRA, that's  
12:15:23 5 Worldwide Regulatory Affairs.  
12:15:25 6 Q How often does the WSA meet?  
12:15:29 7 Philip Morris' WSA?  
12:15:32 8 MR. STONE: Objection; assumes facts not in  
12:15:33 9 evidence, lacks foundation.  
12:15:35 10 THE WITNESS: You don't mean WSA, meaning  
12:15:37 11 WSA? You mean WSA, meaning WRA?  
12:15:41 12 BY MR. McGUIRE:

12:15:41 13 Q I have no idea. You're going to have to  
12:15:48 14 straighten me out here.  
12:15:48 15 A They're two separate organizations. WSA is  
12:15:52 16 Dr. Solana, who is in USA. And WRA is Philip Morris  
12:15:57 17 Management Corp. That's a corporate entity dealing with  
12:16:01 18 regulatory type -- type issues. I don't believe the two  
12:16:08 19 organizations meet regularly or have met regularly.  
12:16:17 20 Recently, that I'm aware of, though, I'm sure that  
12:16:19 21 Dr. Solana speaks to the head of WRA with some degree  
12:16:26 22 of -- some degree of regularity. And one of the attorneys  
12:16:31 23 in WRA is the person we interface with with regard to our  
12:16:41 24 NTP submissions.

12:16:44 25 Q What is NPT?  
12:16:49 26 A NTP, National Toxicology Program.  
12:16:53 27 Q National Toxicology Program?  
12:16:54 28 A Yes.  
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12:16:55 1 Q While you were at Philip Morris, did you  
12:17:00 2 ever participate in quarterly meetings of the WRA on  
12:17:07 3 behalf of the WSA?  
12:17:12 4 A I have, at their invitation, done that on  
12:17:16 5 numerous occasions. Whether it was Worldwide Scientific  
12:17:18 6 Affairs at that point or Scientific Affairs, if we can  
12:17:23 7 dispense with any changes in the acronyms, whether the 'W'  
12:17:27 8 was there before or after, the answer is yes.  
12:17:29 9 Q Okay. So when -- that sounds -- I don't mean  
12:17:35 10 that it was -- it sounds contrary to what you told me  
12:17:38 11 about you don't believe that they interfaced regularly.  
12:17:41 12 Can you explain --  
12:17:43 13 A Yes.  
12:17:44 14 Q -- what sounds like an inconsistency.  
12:17:46 15 A Your first question, I had this vision of WSA

12:17:50 16 getting together with WRA.

12:17:53 17 Q Yeah.

12:17:53 18 A Okay. And, here, we're talking about one

12:17:57 19 person from SA or WSA participating in some part of a WRA

12:18:03 20 meeting.

12:18:04 21 Q Okay. Would the Scientific Affairs people

12:18:08 22 regularly participate in the Worldwide Regulatory Agency?

12:18:16 23 A Affairs.

12:18:17 24 Q Affairs department or group?

12:18:20 25 MR. STONE: Objection; vague and ambiguous as

12:18:21 26 to "regularly."

12:18:23 27 You can answer as best you know.

12:18:25 28 BY MR. McGUIRE:

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12:18:25 1 Q Quarterly.

12:18:27 2 A From time to time, they would invite a

12:18:30 3 scientist. Whether it was from Scientific Affairs or from

12:18:34 4 some other part of R&D. It was not limited to Scientific

12:18:39 5 Affairs. If they wanted to have an update on some -- some

12:18:44 6 technical scientific issue.

12:18:45 7 Q Okay. And you said you were that scientist

12:18:51 8 at one point or another?

12:18:52 9 A I was one of the scientists that was invited

12:18:55 10 and went up there and made presentations.

12:18:57 11 MR. McGUIRE: The rest of those are down

12:19:08 12 there.

12:19:09 13 THE WITNESS: Oh. All this is for me?

12:19:11 14 MR. McGUIRE: Yes. Although, all I want to

12:19:14 15 talk about right now is the top.

12:19:16 16 MR. MILES: Is that the same thing as this?

12:19:18 17 MR. McGUIRE: Yes.

12:19:19 18 MR. MILES: Okay.

12:19:19 19 BY MR. McGUIRE:

12:19:19 20 Q All I want to talk about is the first

12:19:22 21 document that I'll mark as 4020 for identification, which

12:19:27 22 is a document that says "Scientific Activities and Policy

12:19:30 23 Implications." It's apparently an outline for the

12:19:34 24 quarterly WRA meeting in New York on November 12, 1998,

12:19:43 25 and it indicates that it would be a presentation or it

12:19:45 26 seems to me to be a presentation from the WSA team.

12:19:48 27 (Exhibit 4020 was marked for identification.)

12:19:50 28 BY MR. McGUIRE:

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12:19:50 1 Q My first question is did you give the

12:19:53 2 presentation that is outlined in this document?

12:19:56 3 A I could very well have given this

12:19:57 4 presentation.

12:19:58 5 Q Okay. Do you want to look over this in more

12:20:06 6 detail, or should we just go right from the beginning

12:20:09 7 through that?

12:20:09 8 A Go ahead.

12:20:10 9 Q Is this document -- first of all, do you

12:20:13 10 recognize the document?

12:20:14 11 A I recognize the pages I'm looking at.

12:20:18 12 Q Okay.

12:20:20 13 A I haven't looked at the entire document yet.

12:20:23 14 Q Did you prepare the document?

12:20:29 15 A I believe I participated in the preparation

12:20:33 16 of this document.

12:20:33 17 Q There's some handwriting in the document, for

12:20:38 18 example, at page 8.

12:20:39 19 A Uh-huh.

12:20:40 20 Q Is that yours?

12:20:41 21 A No. I don't -- I don't -- I don't think  
12:20:43 22 so. But it could be.  
12:20:44 23 Q There's more on page 10.  
12:20:48 24 A It looks too clear, but this could have been  
12:20:51 25 early in the morning before five cups of coffee.  
12:20:54 26 Q Look at page 10 as well.  
12:20:56 27 Does that --  
12:20:56 28 A That's my writing. And so maybe the other  
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12:20:59 1 one is my writing as well.  
12:21:00 2 Q What was the purpose of preparing the  
12:21:06 3 document?  
12:21:06 4 A This was a presentation, I believe, I made to  
12:21:13 5 Worldwide Scientific Affairs, giving them an update on  
12:21:18 6 where the company was scientifically with regard to ETS,  
12:21:27 7 environmental tobacco smoke.  
12:21:29 8 Q Okay. Now go to page 8. The handwritten  
12:21:33 9 notes there, number of cases slash center, and then there  
12:21:37 10 have been some annotations made to the results reported on  
12:21:43 11 the --  
12:21:43 12 A Uh-huh.  
12:21:44 13 Q -- I'll call it slides.  
12:21:46 14 Do you know whether this was -- do these  
12:21:48 15 represent slides that you used?  
12:21:49 16 A These were overheads.  
12:21:51 17 Q Okay. That's what these represent, overheads?  
12:21:53 18 A These were overheads.  
12:21:55 19 Q Did you have a written text --  
12:21:57 20 A No.  
12:21:58 21 Q -- as well?  
12:21:58 22 A No.  
12:21:58 23 Q So you used these just to prompt your speech?  
12:22:02 24 A Since I prepared them, I pretty much knew  
12:22:07 25 what the content was.  
12:22:09 26 Q All right. And did you make those  
12:22:11 27 annotations?  
12:22:11 28 A No. No. That's -- that's not the way I do a  
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12:22:15 1 1. I don't know what those are.  
12:22:19 2 Q Is that your handwriting that says number of  
12:22:23 3 cases slash --  
12:22:24 4 A That number of cases per center is mine.  
12:22:26 5 Q Okay. And do you --  
12:22:27 6 A And those -- those numbers are not my  
12:22:32 7 numbers. That's not my -- I don't believe that's my  
12:22:35 8 handwriting. But this -- this is my handwriting here on  
12:22:39 9 the side.  
12:22:39 10 MR. STONE: When you say "this" --  
12:22:41 11 THE WITNESS: Number of cases slash center,  
12:22:43 12 that's mine. Numerical values that are written within  
12:22:48 13 this material on page 8, the lower portion is not mine.  
12:22:54 14 BY MR. McGUIRE:  
12:22:56 15 Q What does OR represent?  
12:22:58 16 A Where are we?  
12:22:59 17 Q Same page.  
12:23:00 18 MR. STONE: You can look at the title, the  
12:23:02 19 second title.  
12:23:03 20 THE WITNESS: Oh. Oh. Odds ratios, which  
12:23:07 21 is, for all intents and purposes, equivalent to relative  
12:23:10 22 risks.  
12:23:11 23 BY MR. McGUIRE:  
12:23:14 24 Q And odds ratios, an odds ratio of one would  
12:23:19 25 indicate no increased risk; is that right?



12:23:20 26 A That is an interpretation.  
12:23:24 27 Q Is it an interpretation that Philip Morris  
12:23:27 28 agrees with?  
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12:23:29 1 MR. STONE: Objection; vague and ambiguous,  
12:23:31 2 assumes facts not in evidence that Philip Morris has an  
12:23:33 3 agreement with that issue of statistics or epidemiology.  
12:23:37 4 You can answer as best you know.  
12:23:39 5 THE WITNESS: I think the scientists within  
12:23:41 6 Philip Morris if they saw an odds ratio of one would use  
12:23:45 7 that as part of their evaluation in deciding whether or  
12:23:48 8 not there was a risk. But it would definitely weigh one's  
12:23:54 9 thinking towards the absence of risk, at least based on  
12:23:58 10 whatever that study or studies were or involved.  
12:24:01 11 BY MR. McGUIRE:  
12:24:01 12 Q Is an odds ratio less than one equivalent to  
12:24:08 13 an odds absence of risk?  
12:24:10 14 A An odds ratio less than one is a little bit  
12:24:13 15 more complicated. It depends on what the question you're  
12:24:16 16 asking is. If you were talking about a vaccine or an  
12:24:24 17 antibiotic or some kind of drug where you were treating a  
12:24:27 18 disease and you had the population you treated versus the  
12:24:32 19 population you didn't treat, an odds ratio of less than  
12:24:35 20 one is what you want to see because then you're looking at  
12:24:37 21 reducing risk or some kind of protective -- protective  
12:24:42 22 effect.  
12:24:42 23 An odds ratio less than one -- if you're  
12:24:45 24 looking for increased survival based on some other  
12:24:48 25 parameter, odds ratio of less than one would be an  
12:24:51 26 adverse -- an adverse outcome. So it depends on the  
12:24:54 27 context that you're asking the question. For -- well, it  
12:25:01 28 depends on the context.  
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12:25:01 1 Q The handwritten numbers, do you know from  
12:25:08 2 reviewing this now whether those are accurate -- an  
12:25:12 3 accurate breakdown of the number of cases reporting --  
12:25:16 4 reported per center in the IARC study?  
12:25:21 5 A As I sit here this morning, I can't tell you  
12:25:25 6 what those numbers or those letters represent. I'd have  
12:25:37 7 to go back and look at the source information for this.  
12:25:40 8 Q Was this particular chart prepared by  
12:25:45 9 Neuchatel?  
12:25:49 10 A I don't know.  
12:25:52 11 Q Was it your practice in giving a presentation  
12:25:55 12 like this, to use -- use English names for the centers, or  
12:26:04 13 to use names that are in maybe the host country, like  
12:26:11 14 Veneis and Porta.  
12:26:17 15 A Sometimes I would do both because it's more  
12:26:19 16 than likely this presentation was also made in Neuchatel,  
12:26:24 17 to the scientists in Neuchatel. But this could have been  
12:26:29 18 prepared by Ted or Helmut Reif or Ruth Dempsey.  
12:26:42 19 Q Some of the overheads have "Drafts" written  
12:26:46 20 on them. Others don't.  
12:26:49 21 Do you know whether any of the ones  
12:26:52 22 indicating "Draft" were changed in any way between their  
12:26:57 23 draft form and the form that they were in when you gave  
12:27:01 24 the presentation?  
12:27:02 25 A I don't know the answer to that question.  
12:27:06 26 Q Are you aware of any substantial changes that  
12:27:08 27 were made between drafting this in 1998 and the time you  
12:27:12 28 gave the presentation?  
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12:27:13 1 MR. STONE: Objection; compound, lacks

12:27:14 2 foundation, calls for speculation, assumes facts not in  
12:27:17 3 evidence.

12:27:18 4 THE WITNESS: If there were, they would have  
12:27:20 5 been found in the folder that holds the hard copies for  
12:27:25 6 this and the subsequent presentations that would follow  
12:27:29 7 this. I can't answer that, but it would be evident from  
12:27:33 8 an examination of those files.

12:27:35 9 BY MR. McGUIRE:

12:27:35 10 Q If you go to page 9, on the "IARC -  
12:27:42 11 Evaluation of JNCI Results," what is JNCI?

12:27:48 12 A Journal of the National Cancer Institute.

12:27:50 13 Q And on the first diamond on that overhead, it  
12:28:00 14 indicates "Excess risks were lower than typically found in  
12:28:03 15 many studies indicating that a larger, better controlled  
12:28:06 16 study moves the risk towards 1.0." Then there's notations  
12:28:13 17 on the -- in the margin regarding OR and then something  
12:28:18 18 below that.

12:28:19 19 Is that your handwriting?

12:28:20 20 A Yes, it is.

12:28:20 21 Q And what -- what is it that you're portraying  
12:28:23 22 there?

12:28:25 23 A The OR is the odds ratio, and I can't tell  
12:28:28 24 you at this time what it is I'm trying to represent down  
12:28:34 25 on the -- down on the bottom.

12:28:35 26 Q Next page, you -- that's your handwriting,  
12:28:50 27 correct?

12:28:51 28 A Yes.  
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12:28:51 1 Q And what were you -- what point were you  
12:28:55 2 trying to either make or remember when you put down  
12:28:58 3 "collectively," question mark, "interactions"?

12:29:02 4 A Yes.

12:29:03 5 Q Question mark?

12:29:03 6 A Yes. Sometimes when you're adjusting for  
12:29:12 7 things that you haven't taken into consideration in the  
12:29:15 8 actual design of the study, you can adjust for them or try  
12:29:19 9 to adjust for them after -- after the study. And so what  
12:29:28 10 you have here is the odds ratio for spousal exposure. You  
12:29:32 11 have the point estimate, which is 1.16, and then the  
12:29:37 12 parenthetical, which is 95 percent. CI is the confidence  
12:29:42 13 interval. And then you have the range from 0.93 to 1.44.  
12:29:49 14 So the 1.16 is the point estimate within that -- within  
12:29:53 15 that range.

12:29:55 16 And so if you would just -- for smoking this  
12:30:00 17 classification, you reduce that point estimate from 1.16  
12:30:03 18 to 1.03. If you put in lack of cytological confirmation  
12:30:10 19 of cases -- and I'm talking about lung cancer,  
12:30:13 20 confirmation of lung cancer, you reduce it by 0.3.

12:30:17 21 If you introduce a correction for --

12:30:20 22 Q I think you misspoke. You meant .03, right?

12:30:25 23 A 0.03. Yes. I'm sorry if I misstated that.

12:30:29 24 Q That's all right.

12:30:31 25 A For confounding, you can reduce it further  
12:30:35 26 by 0.01, and then based on the fact that -- whether you're  
12:30:41 27 doing conditioned or unconditioned, logistic response, and  
12:30:45 28 taking the -- the kind of way you take randomness in  
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12:30:49 1 account, you can further lower it by 0.01.

12:30:52 2 Doing that, and if one just simply  
12:30:56 3 arithmetically just adds these individual adjustments, you  
12:31:01 4 reduce the point estimate to 1.08. That, in itself, is a  
12:31:06 5 50-percent reduction of a nonstatistically significant  
12:31:10 6 point estimate.

12:31:12 7 And my notes are that these are evaluated  
12:31:18 8 individually. In reality, I think a consideration should  
12:31:23 9 be given not to doing one at a time in a linear fashion,  
12:31:32 10 but to evaluate what probably is a more complex  
12:31:35 11 relationship between these factors that are more than  
12:31:39 12 likely not linear and to test whether any of these  
12:31:43 13 interact, either to remove them as adjustment factors,  
12:31:49 14 make them larger, make them smaller. And so that was a  
12:31:53 15 question that I had about this.

12:31:56 16 And, in fact, it was something like this  
12:32:01 17 that I presented at the first NTP oral presentation in  
12:32:06 18 Research Triangle Park.

12:32:08 19 Q Okay.  
12:32:09 20 A Okay.  
12:32:10 21 Q And this is also -- you made the same or took  
12:32:15 22 the same position in response to the Cal EPA report?  
12:32:20 23 Isn't that true?  
12:32:21 24 A It wouldn't surprise me.  
12:32:22 25 Q What -- who is or what is CRC?  
12:32:30 26 A CRC is an acronym for the Contract Research  
12:32:35 27 Center. It's located outside of Brussels in Belgium, and  
12:32:43 28 it's part of INBIFO.

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12:32:46 1 Q What's the facility in Neuchatel called?  
12:32:57 2 What's the acronym for that?  
12:32:58 3 A FTR.  
12:33:00 4 Q FTR.  
12:33:01 5 Is it true that FTR contracted with CRC and  
12:33:17 6 INBIFO to do work on this rat study?  
12:33:20 7 A They -- that wouldn't surprise me at all  
12:33:24 8 since, from a business perspective -- and this is really  
12:33:29 9 outside of my domain -- I think it's FTR that actually  
12:33:35 10 owns those facilities.  
12:33:37 11 Q Is FTR listed as the client?  
12:33:47 12 A I don't know.  
12:33:48 13 Where are we?  
12:33:48 14 Q We're not anywhere on this page.  
12:33:50 15 A Oh.  
12:33:51 16 Q This is just something that occurred to me.  
12:33:53 17 A In the documents, if -- I think Mr. Stone  
12:33:56 18 turned over to you some INBIFO documents. And if I  
12:34:00 19 remember correctly, in those documents, it will say CRC,  
12:34:05 20 and then it will say maybe client. And then it will have  
12:34:08 21 FTR Neuchatel.  
12:34:11 22 Now, I would say the people at WRA who heard  
12:34:16 23 this more than likely knew of that relationship. I know  
12:34:21 24 some of them for sure did. I can't testify that every  
12:34:24 25 single person in WRA knew that.  
12:34:27 26 Q And the only person that has permission to  
12:34:31 27 obtain and review the data is the client, by contract?  
12:34:37 28 Isn't that true?

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12:34:38 1 A I'm not sure I understand what you're --  
12:34:40 2 MR. STONE: Objection; calls for a legal  
12:34:45 3 conclusion.  
12:34:46 4 BY MR. McGUIRE:  
12:34:46 5 Q Would you turn to page 13, please.  
12:35:05 6 A Yes.  
12:35:06 7 Q Under the "U.S. (16 cities), there's two  
12:35:13 8 quotes or cites to Jenkins. One is the 16-cities study,  
12:35:19 9 and the other one is representative study submitted for  
12:35:22 10 publication.  
12:35:22 11 Has this study been published?

12:35:24 12 A Actually, several studies -- the study  
12:35:29 13 referred to here has been published. And subsequent  
12:35:31 14 studies related to this have also been published.

12:35:34 15 Q Okay. So the representative study that you  
12:35:36 16 referred to on this overhead has now -- is now part of the  
12:35:40 17 published peer-reviewed literature?

12:35:42 18 A And more than that, I think the data has been  
12:35:46 19 turned over -- the underlying data has been turned over to  
12:35:53 20 other people who are interested in it.

12:35:54 21 Q Turn to page 18.

12:36:17 22 A Yes.

12:36:20 23 Q Under "Exposure assessment," what does the  
12:36:24 24 reference to "Repace model" mean?

12:36:28 25 A Over the last approximately 20 years,  
12:36:33 26 Mr. Repace has been publishing a series of models, more or  
12:36:42 27 less each time he's modified it, that has to do with  
12:36:46 28 estimating or approximating ETS exposure in human  
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12:36:51 1 populations.  
12:36:52 2 And we were trying to understand his models  
12:37:02 3 as it relates to what was evident from not model  
12:37:10 4 hypothetical constructs, but from real world -- real world  
12:37:14 5 data. That's what's represented here. And I think Philip  
12:37:18 6 Morris scientists are still doing that, because Mr. Repace  
12:37:23 7 continues to use this model, publish -- publish on this  
12:37:32 8 model.

12:37:32 9 Q Does he -- does his model take into account  
12:37:40 10 personal monitoring studies, if you know?

12:37:42 11 A Not that I'm aware of.

12:37:44 12 Q And what personal monitoring studies are you  
12:37:46 13 referring to in the outline here?

12:37:48 14 A Well, I'm not specifically sure, but I  
12:37:51 15 wouldn't be surprised if I'm referring to something we  
12:37:57 16 just talked about. And that's the Jenkins 16-City Study,  
12:38:01 17 which is a personal monitoring.

12:38:03 18 Q Has Dr. Jenkins reviewed Mr. Repace's work?

12:38:07 19 A I believe he has.

12:38:08 20 Q Did he do so at the request of Philip Morris?

12:38:11 21 A No. I think he did so self-stimulated. But  
12:38:21 22 did I talk to Roger about his data as it relates to Jim  
12:38:28 23 Repace's model? I bet you I did.

12:38:30 24 Q What was the results of those discussions?

12:38:36 25 A I can't say specifically what the results of  
12:38:38 26 the discussions were, other than for Roger to come back to  
12:38:40 27 me and say Jim Repace's model is not adequate for the data  
12:38:46 28 we've collected.  
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12:38:47 1 Q What did you understand it to mean by "not  
12:38:49 2 adequate"?

12:38:50 3 A The model doesn't fit the data.

12:38:52 4 Q Does -- did you understand him to mean that  
12:38:56 5 the model -- excuse me -- that the data disputes the  
12:39:01 6 accuracy or validity of the model?

12:39:03 7 A Well, my understanding of the statement that  
12:39:09 8 the model doesn't fit the data, in normal conversation  
12:39:16 9 between two scientists, you are questioning the validity  
12:39:20 10 of the model.

12:39:21 11 Q Have you made -- have you questioned the  
12:39:25 12 validity of Mr. Repace's model before the Cal EPA?

12:39:30 13 A It's possible. I don't -- I don't remember  
12:39:34 14 specifically. But I wouldn't be surprised.

12:39:36 15 Q Have you done so before the Department of  
12:39:39 16 Health and Human Services?

12:39:44 17 A You mean NTP?  
12:39:45 18 Q Yes.  
12:39:49 19 A I may have or somebody else may have.  
12:39:56 20 Q Mr. Repace appears again at the next slide  
12:40:00 21 regarding a review of J. Repace publications.  
12:40:04 22 A Uh-huh.  
12:40:05 23 Q What did you say?  
12:40:07 24 A This is under the header "U.S. OSHA  
12:40:12 25 Scientific activity -- activities." And it's the  
12:40:15 26 second -- the second diamond. And it relates to OSHA.  
12:40:21 27 I'm not sure at this point in time whether  
12:40:24 28 Mr. Repace was still a government employee. He was with  
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12:40:28 1 EPA for a number of years and was on some kind of loan to  
12:40:35 2 OSHA during -- during some of their hearings. And OSHA,  
12:40:44 3 over the course of time, I believe, relied in some way on  
12:40:48 4 Mr. Repace and some aspects of his model in their  
12:40:54 5 deliberations with regard to the notice of proposed rule  
12:40:58 6 making, I think, with respect to indoor air quality.  
12:41:04 7 Q Was Mr. Repace's model cited by the NTP as  
12:41:11 8 part of the justification for their conclusions?  
12:41:14 9 MR. STONE: Objection; the document speaks  
12:41:15 10 for itself.  
12:41:16 11 THE WITNESS: It could be. I mean, I -- we  
12:41:20 12 just went through it, and I may have seen Mr. Repace --  
12:41:23 13 Mr. Repace and maybe Lowrey's name in one such piece.  
12:41:30 14 BY MR. McGUIRE:  
12:41:32 15 Q Has Dr. Jenkins published his review of  
12:41:36 16 Mr. Repace's model?  
12:41:37 17 A I think in one or more of Dr. Jenkins'  
12:41:42 18 publications, he has indicated that the model does not fit  
12:41:48 19 the real world data obtained in the 16-Cities Study.  
12:41:53 20 Which of those publications -- I don't believe it was the  
12:41:56 21 first -- the first publication. But it was in at least  
12:41:58 22 one subsequent publication of Dr. Jenkins and his  
12:42:03 23 colleagues at Oak Ridge National Labs.  
12:42:06 24 Q Was the 16-Cities Study funded by Philip  
12:42:12 25 Morris?  
12:42:12 26 A It was funded by the Center for Indoor Air  
12:42:15 27 Research, which is a not for profit organization that  
12:42:22 28 receives at least half of its funds from Philip Morris.  
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12:42:26 1 The other funds primarily came from other tobacco  
12:42:30 2 companies, including Lorillard and Reynolds. Whether  
12:42:35 3 B&W -- B&W was not a party to CIAR at the time the 16-City  
12:42:41 4 Studies were -- were done.  
12:42:43 5 Q How did Philip Morris -- let me withdraw  
12:42:56 6 that.  
12:42:57 7 Did Philip Morris attempt at some point in  
12:43:00 8 time to improve the credibility of CIAR, despite the fact  
12:43:08 9 that its work was being funded by the industry?  
12:43:12 10 MR. STONE: Objection; assumes facts not in  
12:43:13 11 evidence, argumentative, compound, lacks foundation, vague  
12:43:17 12 and ambiguous.  
12:43:18 13 THE WITNESS: It was a fact evident to  
12:43:24 14 anybody receiving funds from CIAR, and it was a voluntary  
12:43:30 15 application submission for the vast majority of  
12:43:35 16 applicants. And on the publications which attributed CIAR  
12:43:39 17 and that presentations made in which funding from CIAR was  
12:43:43 18 acknowledged.  
12:43:46 19 Did we try to continue to enhance recognition  
12:43:52 20 of CIAR and its contributions in this area? I would say  
12:43:57 21 yes. And so within that context, in continuing

12:44:02 22 enhancement of the center as it relates to scientific  
12:44:07 23 contributions in this area, that's something that we did  
12:44:09 24 until the doors closed.  
12:44:11 25 BY MR. McGUIRE:  
12:44:11 26 Q Let's go to the next, page 22. You see some  
12:44:29 27 of the names that you listed off yesterday. Mr. -- or  
12:44:34 28 Dr. -- I'm going to assume he's a doctor. All of these  
Vail, Christians & Associates (619)544-8344 310  
12:44:38 1 people are some type of Ph.D.  
12:44:42 2 Gullotta, does he work for Philip Morris?  
12:44:46 3 A Dr. Frank Gullotta --  
12:44:48 4 Q Yes.  
12:44:49 5 A -- is a scientist within Dr. Solana's  
12:44:51 6 organization. He is a Ph.D., behavioral psychologist.  
12:44:57 7 Been with the company for 20 something years.  
12:45:01 8 Q And he has established Philip Morris'  
12:45:08 9 scientific position on addiction?  
12:45:10 10 MR. STONE: Objection; vague and ambiguous.  
12:45:12 11 BY MR. McGUIRE:  
12:45:12 12 Q Is that correct?  
12:45:12 13 A No. I think you're reading the header  
12:45:15 14 incorrectly. "Establishment of scientific positions" is a  
12:45:21 15 dynamic and a process that continues -- continues to go  
12:45:25 16 on. And it's going on right now, because these three  
12:45:33 17 individuals and myself and one Mitch Ritter from Neuchatel  
12:45:40 18 are on the current scientific position team for  
12:45:44 19 addiction. And there will be a presentation made in  
12:45:47 20 Richmond next month.  
12:45:49 21 And I think subsequent to that, Dr. Solana  
12:45:53 22 will probably go up to New York and talk to folks in WRA  
12:45:59 23 and other individuals about where our current -- our  
12:46:04 24 current scientific thinking is on this.  
12:46:07 25 Q On addiction?  
12:46:08 26 A Yes.  
12:46:08 27 Q Have you provided, as far as you know, when I  
12:46:13 28 asked you questions about addictions yesterday, the  
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12:46:16 1 current scientific thinking of Philip Morris on addiction?  
12:46:19 2 A I gave you the answer for that.  
12:46:23 3 Q Ammonia; what is Philip Morris' scientific  
12:46:29 4 position on ammonia?  
12:46:30 5 MR. STONE: Objection; beyond the scope on  
12:46:32 6 which this witness has been asked to testify; namely,  
12:46:36 7 issues related to ETS, overbroad, vague and ambiguous.  
12:46:40 8 THE WITNESS: This has nothing to do with  
12:46:43 9 environmental tobacco smoke. This has to do with issues  
12:46:48 10 raised with regard to our use of ammonia that emanated  
12:46:54 11 originally in 1994 with some claims that Dr. Kessler made  
12:47:00 12 before the Waxman Congressional committees.  
12:47:05 13 BY MR. McGUIRE:  
12:47:05 14 Q Does he claim that ammonia was used to spike  
12:47:10 15 or alter the pH of tobacco so as to increase the delivery  
12:47:14 16 of nicotine?  
12:47:16 17 MR. STONE: Same objections. Also compound.  
12:47:18 18 BY MR. McGUIRE:  
12:47:18 19 Q Is that the claim?  
12:47:19 20 A Remove the word "spike."  
12:47:21 21 Q Add?  
12:47:22 22 A Huh?  
12:47:22 23 Q Add?  
12:47:24 24 A No. That ammonia was used to somehow modify  
12:47:28 25 the delivery of nicotine. Now, at various points in time,  
12:47:33 26 pH came, pH went. Now pH is back. So I think the

12:47:38 27 fairest, most global way of saying it is the allegation  
12:47:44 28 is, that the use of ammonia increases the impact of the  
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12:47:48 1 nicotine on the smoker, by whatever mechanism.  
12:47:50 2 Q And whenever you -- next to ammonia -- first  
12:47:54 3 of all, you say that ammonia or the issue has nothing to  
12:47:57 4 do with ETS, correct?  
12:47:59 5 A That's right.  
12:48:00 6 Q Well, let me just ask you hypothetically if  
12:48:02 7 ammonia does increase nicotine and if nicotine is  
12:48:05 8 addictive, doesn't that mean more ETS is going to be  
12:48:09 9 produced by a smoker?  
12:48:10 10 MR. STONE: Objection; compound.  
12:48:11 11 BY MR. McGUIRE:  
12:48:11 12 Q Who is addicted to the cigarettes?  
12:48:14 13 MR. STONE: Incomplete hypothetical without  
12:48:16 14 all the elements, lacks foundation, calls for speculation,  
12:48:18 15 vague and ambiguous.  
12:48:19 16 THE WITNESS: I'm not sure I understand your  
12:48:20 17 question.  
12:48:20 18 BY MR. McGUIRE:  
12:48:20 19 Q It's okay.  
12:48:24 20 Then we have next to "Ammonia," Seeman,  
12:48:27 21 S-e-e-m-a-n, Haussmann, and Leyden.  
12:48:31 22 What is that meant --  
12:48:33 23 A That's Dr. Jeffrey Seeman, Ph.D. in  
12:48:40 24 chemistry, probably one of the world's authorities on the  
12:48:44 25 chemistry and -- physical chemistry of ammonia, pH, and  
12:48:49 26 nicotine.  
12:48:50 27 Dr. Hans Juergen Haussmann from INBIFO, and  
12:48:57 28 Dr. Don Leyden former chair of analytical chemistry of  
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12:49:01 1 Colorado State and a recent retired employee of Philip  
12:49:05 2 Morris. And they were working on scientific position  
12:49:13 3 papers with regard to ammonia. Some of this work resulted  
12:49:16 4 in experiments which have been presented and published in  
12:49:21 5 the peer-reviewed literature. You can find Dr. Seeman's  
12:49:25 6 name either in the first, middle, or last of those  
12:49:29 7 publications.  
12:49:29 8 Q Did any of the work that they do not  
12:49:32 9 result -- not result in published literature?  
12:49:35 10 A If it's not been published, they're still  
12:49:38 11 working on to publish it. But as far as I know, they have  
12:49:45 12 been charged with publishing everything that they're doing.  
12:49:51 13 Q And now we have "ETS & health."  
12:49:54 14 Who is Sanders?  
12:49:55 15 A Ted Sanders in Neuchatel.  
12:49:58 16 Q And in 1998, you were not heading up the  
12:50:06 17 effort regarding ETS and health?  
12:50:08 18 A Oh, I was -- I was heading it up. But I  
12:50:12 19 delegated some things. And Ted was my right-hand -- my  
12:50:20 20 right-hand person.  
12:50:20 21 Q Has he published in the area of ETS and  
12:50:23 22 health?  
12:50:23 23 A No.  
12:50:25 24 Q Has he stimulated other people to publish?  
12:50:30 25 A Yes, sir.  
12:50:32 26 Q Did the stimulation include money?  
12:50:34 27 A Yes. Money to carry out research. Money to  
12:50:38 28 carry out analysis. Money to attend scientific --  
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12:50:45 1 scientific meetings, for example.  
12:50:46 2 Q Do you know how much money in 1998 Mr. -- or

12:50:52 3 Dr. Sanders was given to stimulate?

12:50:55 4 A I can't tell you how much money Dr. Sanders  
12:50:57 5 was given to do that, but that would be evident from an  
12:51:02 6 examination of the financial reports that he was  
12:51:05 7 responsible for.

12:51:06 8 Q When you say "that would be evident from the  
12:51:13 9 financial reports," what do you mean? What financial  
12:51:16 10 reports are you talking about?

12:51:17 11 A He had a budget. It was a budget within my  
12:51:19 12 budget. And when he spent money, that money had to be  
12:51:28 13 accounted for. And it was accounted for. If it was an  
12:51:32 14 individual, it had that individual's name. It had the  
12:51:34 15 title of the project and any outcomes that resulted from  
12:51:37 16 that.

12:51:37 17 Q Okay. Now, your budget included items other  
12:51:40 18 than ETS and health?

12:51:41 19 A Yes.

12:51:41 20 Q Okay. What percentage -- and give me your  
12:51:46 21 best estimate as to what percentage of your budget was  
12:51:51 22 allocated to Mr. Sanders in 1998.

12:51:55 23 A I can tell you not simply for Mr. Sanders,  
12:52:00 24 but for ETS, within Scientific Affairs in 1998, the most  
12:52:06 25 significant portion -- I can't give you a -- it's more  
12:52:09 26 than 50 percent was ETS related.

12:52:13 27 Q Are you including product development things  
12:52:15 28 such as Accord when you make this 50 percent?

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12:52:18 1 A We are not the people responsible financially  
12:52:24 2 for product development. That's a different entity. So  
12:52:29 3 if you're asking me about the no sidestream Accord  
12:52:34 4 product, that's not part of my answer. That's --

12:52:39 5 Q How much are we talking about at 50 percent?

12:52:48 6 A Well, I'd have to factor in the Center for  
12:52:51 7 Indoor Air Research, which, in and of itself, is 6- to 7  
12:52:55 8 million dollars of Philip Morris' contribution at that  
12:52:59 9 time. These are, Mr. McGuire, rough estimates. And then  
12:53:02 10 I would say another several million dollars more within  
12:53:06 11 Scientific Affairs. And I'm not including the monies  
12:53:12 12 related to what INBIFO was carrying out at the time with  
12:53:17 13 regard to the lifetime study, which are several million  
12:53:21 14 dollars -- several million dollars more.

12:53:24 15 Q Is Mr. Sanders still with the company?

12:53:30 16 A Dr. Sanders is --

12:53:31 17 MR. STONE: Asked and answered.

12:53:34 18 THE WITNESS: -- still with the company,  
12:53:36 19 yes.  
12:53:36 20 Sorry.

12:53:37 21 BY MR. MCGUIRE:

12:53:37 22 Q Is he still in charge of ETS and health?

12:53:40 23 MR. STONE: Objection; assumes facts not in  
12:53:41 24 evidence, misstates the witness's prior testimony.

12:53:44 25 THE WITNESS: Yesterday, we went through  
12:53:46 26 this, and I indicated to you that under Dr. Solana's  
12:53:50 27 leadership, that both Dr. Sanders and Dr. Walk are the  
12:53:53 28 principals responsible for ETS within Worldwide Scientific  
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12:53:57 1 Affairs.

12:53:57 2 MR. STONE: It's getting -- approaching  
12:54:02 3 1 o'clock.

12:54:03 4 MR. MCGUIRE: Oh, I'm sorry. I got lost  
12:54:05 5 there.

12:54:05 6 MR. STONE: I don't know if you want to --

12:54:07 7 MR. MCGUIRE: Let me just -- one quick -- a



12:54:09 8 few more quick questions, and then I'll be done with this  
12:54:12 9 document. Then we'll take a break for lunch, and I  
12:54:14 10 apologize to everybody for going well beyond what I  
12:54:17 11 intended to do.  
12:54:18 12 BY MR. McGUIRE:  
12:54:18 13 Q Where we have a switching of the order of  
12:54:23 14 names, as we do with the Gullotta group and the Takada  
12:54:29 15 group at the bottom, the top and the bottom, is there any  
12:54:33 16 significance to that?  
12:54:34 17 A Yes.  
12:54:35 18 Q What is that?  
12:54:35 19 A The significance is who is the person that  
12:54:38 20 has the lead in that. So if you see Gullotta underlined,  
12:54:45 21 he is the principal responsible. And Takada and Davies  
12:54:49 22 would be part of the supportive group of the team. But it  
12:54:53 23 would be the Gullotta team.  
12:54:55 24 Q The last page, No. 24.  
12:54:59 25 When you look at this page, does that  
12:55:00 26 indicate to you that every one of these people were part  
12:55:03 27 of the team?  
12:55:04 28 A I think what this represents is these are the  
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12:55:10 1 people that helped me put together this presentation.  
12:55:12 2 Q Okay. So your previous answer remains the  
12:55:14 3 same, even after seeing this, it was just one person? It  
12:55:18 4 could have been me, probably was me, and these other  
12:55:22 5 people helped me?  
12:55:24 6 MR. STONE: Objection; compound, misstates  
12:55:25 7 the witness's prior testimony.  
12:55:28 8 You can answer.  
12:55:33 9 THE WITNESS: Could you restate the question?  
12:55:34 10 MR. McGUIRE: I'll try to shorten it up a  
12:55:36 11 little bit.  
12:55:36 12 BY MR. McGUIRE:  
12:55:36 13 Q Does your previous answer remain the same?  
12:55:39 14 A That I probably made this presentation, yes.  
12:55:41 15 MR. McGUIRE: Thanks. Okay.  
12:55:46 16 You now have with you a copy -- or I've given  
12:55:48 17 to you and your counsel, a copy of a number of documents  
12:55:54 18 that we may touch upon this afternoon. And so in order to  
12:56:00 19 allow you some time to, I don't know, go through them --  
12:56:06 20 I'm sure some of them you have seen before -- why don't we  
12:56:10 21 make this -- come back at 2:20?  
12:56:14 22 MR. STONE: Let's come back and -- let's try  
12:56:15 23 to take a short break and let you ask him questions about  
12:56:18 24 them so we make sure we get done today, would be my  
12:56:20 25 preference. Let's try to get back at least by 2:00.  
12:56:24 26 Can we do that?  
12:56:25 27 MR. McGUIRE: Okay. Back by 2:00.  
12:56:27 28 VIDEOGRAPHER: We are off the record. The  
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12:56:29 1 time is 12:56.  
12:56:30 2 (Lunch recess.)  
14:09:00 3 ///  
14:09:00 4 ///  
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14:09:00 1  
14:09:00 2  
14:09:00 3 VIDEOGRAPHER: Good afternoon. We are back  
14:09:05 4 on the record. The time is 2:09.

14:09:08 5  
14:09:08 6 EXAMINATION (RESUMED)

14:09:08 7 BY MR. McGUIRE:

14:09:08 8 Q Dr. Carchman, in front of you, the first  
14:09:16 9 document I see in the pile that I gave you before lunch is  
14:09:20 10 a listing of studies relating to the relationship between  
14:09:27 11 ETS and lung cancer and then a separate listing of ETS and  
14:09:31 12 heart disease. This, apparently, comes from the Philip  
14:09:37 13 Morris website. Although, I can't tell you when it was  
14:09:40 14 printed off that site.

14:09:41 15 The questions are as follows: No. 1, do you  
14:09:44 16 recognize this to be the listing of epidemiological  
14:09:47 17 studies regarding ETS and lung cancer and ETS and heart  
14:09:51 18 disease that is presently posted on the Philip Morris  
14:09:55 19 website?

14:09:56 20 MR. STONE: Objection; lacks foundation. The  
14:09:59 21 website will speak for itself as to what it has on it  
14:10:03 22 presently.

14:10:03 23 You can confirm as best you know.

14:10:05 24 THE WITNESS: This was a list that was on the  
14:10:08 25 website. Whether it's still the same list, I don't know.  
14:10:11 26 I haven't checked the website for this information in the  
14:10:15 27 last week. But this is a list of information that you can  
14:10:20 28 click on to, yes.

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(Exhibit 4021 was marked for identification.)

14:10:22 1  
14:10:22 2 BY MR. McGUIRE:

14:10:22 3 Q And there are 47 studies listed.  
14:10:25 4 Do you know whether all 47 are either  
14:10:29 5 refereed or peer-reviewed articles?

14:10:34 6 A We can go through -- through them. I can't  
14:10:36 7 tell you off the top of my head, without examining each  
14:10:39 8 one.

14:10:40 9 Q Well, the question I really have is whether  
14:10:45 10 Philip Morris only listed peer review -- peer-reviewed  
14:10:49 11 articles or not.

14:10:50 12 A No.

14:10:53 13 Q Okay. Do these articles encompass the same  
14:11:04 14 group of articles that you provided the NTP in response to  
14:11:10 15 their invitation to comment on the listing of ETS as a  
14:11:16 16 known carcinogen?

14:11:18 17 MR. STONE: Objection; misstates the

14:11:19 18 witness's prior testimony, assumes facts not in evidence.  
 14:11:23 19 And under the best evidence rule, the documents speak for  
 14:11:27 20 themselves with respect to whether they're the same or  
 14:11:30 21 not.

14:11:30 22 THE WITNESS: I mean, I would have to go back  
 14:11:32 23 and look at those submissions and just check -- check  
 14:11:35 24 through this. But this looks like, at least up through  
 14:11:40 25 1998, an accurate list. I think there were some  
 14:11:45 26 additional studies that probably need to go on here. And  
 14:11:55 27 there were some things that are doctoral theses or thesi  
 14:12:02 28 that have now been published. I'm looking on page 3,  
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14:12:05 1 No. 37, the Cardenas thesis appears as a publication.  
 14:12:11 2 It's not on this list because it's subsequent to this.  
 14:12:14 3 It's a Cardenas and Tune, Michael Tune, from the American  
 14:12:17 4 Cancer Society. So I would say this -- this is accurate,  
 14:12:20 5 but it probably needs to be updated.

14:12:22 6 Q How often is this list updated, if you know?  
 14:12:27 7 A I don't know.  
 14:12:27 8 Excuse me. So this is 4021?  
 14:12:36 9 Q Correct.  
 14:12:36 10 Now, would it be your estimate that the  
 14:12:39 11 substantial majority of these studies would be  
 14:12:41 12 peer-reviewed studies?

14:12:43 13 A Substantial, meaning more than 50 percent?  
 14:12:46 14 Q Yes. I'm trying to figure out which is the  
 14:12:48 15 easiest way --  
 14:12:49 16 A Yeah, I think so.  
 14:12:50 17 Q -- to go through this. Just tell me which  
 14:12:53 18 ones are and which ones aren't.  
 14:12:55 19 A The majority of them are peer-reviewed.  
 14:12:57 20 Q Okay.  
 14:12:58 21 A So No. 37 is a nonpublished doctoral thesis  
 14:13:03 22 out of Emory University. But I can tell you they have  
 14:13:08 23 published parts of this in a peer-reviewed journal.  
 14:13:13 24 Q Okay.  
 14:13:14 25 A Okay. So the majority are  
 14:13:16 26 peer-reviewed. But that's -- that's an example of one --  
 14:13:23 27 an unusual example of one that's not but was later  
 14:13:27 28 on. But that's not represented on this list, I think.  
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14:13:31 1 Q Working your way through the list, would you  
 14:13:33 2 tell me just those that you know, without any further  
 14:13:36 3 reference or research, that they are -- that the study is  
 14:13:40 4 not a peer-reviewed article.  
 14:13:42 5 A Okay. Start from the beginning?  
 14:13:45 6 Q If you would.  
 14:13:45 7 A Okay. No. 2 is part of a book. No. 5 is a  
 14:14:04 8 conference. No. 6 is a conference. No. 9 is not a  
 14:14:17 9 journal article that's been peer-reviewed. No. 19,  
 14:14:37 10 No. 20, No. 21. I believe, No. 31. We mentioned 37  
 14:15:05 11 already. No. 38. No. 1 on page 3 of 5 under "ETS and  
 14:15:27 12 Heart Disease." No. 4. No. 6. I believe, No. 8.  
 14:15:52 13 No. 10. No. 14. That's my -- that's it.

14:16:25 14 Q The ETS and heart disease articles are  
 14:16:28 15 identified as being selected studies.  
 14:16:30 16 What criteria was used, if you know?  
 14:16:33 17 A As I sit here today, I can't -- I can't tell  
 14:16:38 18 you the answer to that.  
 14:16:39 19 Q Does the 47 articles on ETS and lung cancer  
 14:16:43 20 represent all of the peer-reviewed articles on the  
 14:16:47 21 subject?  
 14:16:48 22 A Well, some of them aren't articles. Some of

14:17:01 23 them are either abstracts or doctoral graduate student  
14:17:05 24 dissertations. And, just quickly looking through this,  
14:17:10 25 there are papers that are analyses of other people's work  
14:17:15 26 that are missing from here. So there might -- there might  
14:17:26 27 be some -- some studies that are absent from here, but I  
14:17:30 28 don't know if they're absent because they're not original  
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14:17:34 1 studies, but analyses of other studies.  
14:17:38 2 Q I do see a printout time on this. This is  
14:17:43 3 June 2, 2000.  
14:17:45 4 A Uh-huh.  
14:17:45 5 Q So that would lead me to believe that this is  
14:17:48 6 what's currently on the website?  
14:17:49 7 A If that's what it says.  
14:17:51 8 Q I'm sorry.  
14:17:53 9 A Go ahead.  
14:17:54 10 Q I notice Dr. Witschi's work is not on here.  
14:17:57 11 Is there a reason for that?  
14:17:58 12 A Sure.  
14:17:58 13 Q What's that?  
14:17:59 14 A It doesn't fit under epidemiological  
14:18:01 15 studies. Dr. Witschi's work is not an epidemiological  
14:18:04 16 study.  
14:18:05 17 Q So that one criteria for the 47 studies is it  
14:18:08 18 had to be an epi work?  
14:18:10 19 A Human-related study.  
14:18:12 20 Q Any other criteria for listing on the 47?  
14:18:16 21 A These are all epidemiological studies.  
14:18:21 22 They're all human studies, and it represents, I think,  
14:18:25 23 what's been published around the world, not limited to the  
14:18:29 24 United States.  
14:18:29 25 Q Do any of these studies, to your knowledge,  
14:18:31 26 conclude that there is a causal relationship between ETS  
14:18:35 27 and lung cancer?  
14:18:36 28 MR. STONE: Objection; compound, lacks  
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14:18:39 1 foundation. The documents speak for themselves.  
14:18:44 2 THE WITNESS: Some of them do, yes, and some  
14:18:46 3 of them don't.  
14:18:48 4 BY MR. McGUIRE:  
14:18:48 5 Q The same question regarding the selective  
14:18:52 6 studies regarding ETS and heart disease.  
14:18:54 7 Do some of these studies, to your knowledge,  
14:18:58 8 conclude that there is a relationship or an association  
14:19:02 9 between ETS and heart disease?  
14:19:04 10 MR. STONE: Same objections.  
14:19:05 11 THE WITNESS: Some do and some don't.  
14:19:07 12 (Exhibit 4022 was marked for identification.)  
14:19:07 13 BY MR. McGUIRE:  
14:19:07 14 Q The next document I would like to discuss  
14:19:18 15 we'll mark for identification as 4022. It should be --  
14:19:25 16 it's not that one there. It's a little thicker, and it is  
14:19:30 17 Philip Morris Management Corporation's "Comment Concerning  
14:19:34 18 Procedural Issues in the Development and Use of NTP's ETS  
14:19:38 19 Background Document and the Proposed Listing of ETS as a  
14:19:43 20 Known Human Carcinogen."  
14:19:44 21 A Uh-huh.  
14:19:45 22 Q Do you have that?  
14:19:46 23 A Yes.  
14:19:46 24 Q Does this document represent what it says it  
14:19:49 25 is?  
14:19:49 26 MR. STONE: Objection; lacks foundation,  
14:19:51 27 calls for speculation, no personal knowledge.

14:19:56 28 THE WITNESS: I don't -- I can't answer that  
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14:19:58 1 question.  
14:19:58 2 BY MR. McGUIRE:  
14:19:58 3 Q Who prepared this document?  
14:20:00 4 MR. STONE: Objection; lacks foundation,  
14:20:01 5 calls for speculation.  
14:20:04 6 THE WITNESS: The -- I believe, the folks in  
14:20:06 7 Worldwide Regulatory Affairs.  
14:20:09 8 BY MR. McGUIRE:  
14:20:09 9 Q Did you have input to it with respect to the  
14:20:14 10 document?  
14:20:15 11 MR. STONE: Objection; lacks foundation.  
14:20:16 12 THE WITNESS: I don't believe so, and if I  
14:20:18 13 did, it was probably minimal. But I don't remember having  
14:20:21 14 input into this.  
14:20:22 15 BY MR. McGUIRE:  
14:20:22 16 Q When you say "the folks at Worldwide  
14:20:25 17 Health" --  
14:20:25 18 A Excuse me. Regulatory.  
14:20:28 19 Q I'm sorry.  
14:20:29 20 Is there an individual that it was most  
14:20:31 21 likely, based on the time period and who was working for  
14:20:38 22 the company at that time?  
14:20:39 23 A Just as we went through the team approach  
14:20:46 24 for I think the other scientific positions, as we talked  
14:20:50 25 about in one of the earlier documents, there was probably  
14:20:55 26 a team leader and then a team associated with this. Who  
14:20:59 27 it was at that time, I can't tell you, as I sit here this  
14:21:04 28 afternoon.  
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14:21:05 1 Q Did you review this document before it was  
14:21:10 2 put in final form?  
14:21:13 3 MR. STONE: Objection; lacks foundation.  
14:21:16 4 THE WITNESS: I could have. I don't remember.  
14:21:19 5 BY MR. McGUIRE:  
14:21:19 6 Q Do you know if Mr. Sanders -- or Dr. Sanders  
14:21:22 7 had any input regarding this document?  
14:21:25 8 A I don't think so.  
14:21:29 9 Q The next one would be the secondhand smoke  
14:21:53 10 web page information. We'll mark for identification as  
14:21:57 11 4023.  
14:21:58 12 (Exhibit 4023 was marked for identification.)  
14:22:00 13 BY MR. McGUIRE:  
14:22:00 14 Q Does this appear to be the information  
14:22:05 15 presently on the web regarding Philip Morris' public  
14:22:14 16 positions on secondhand smoke?  
14:22:18 17 A This is, just looking on page 2 of this,  
14:22:22 18 because it has the click for the NTP report, this is the  
14:22:26 19 most recent version of the Philip Morris website dealing  
14:22:32 20 with -- dealing with secondhand smoke.  
14:22:33 21 Q Do you know how extensive this section was  
14:22:42 22 before the click for the NTP report was added? Was it  
14:22:53 23 pretty much everything but that?  
14:22:55 24 A Yes, sir.  
14:23:01 25 MR. STONE: I do notice on this exhibit, most  
14:23:03 26 of the right margin on each page has been cut off.  
14:23:06 27 MR. McGUIRE: I just saw that myself.  
14:23:08 28 MR. STONE: I think probably you could get a  
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14:23:10 1 better copy that would be readable.  
14:23:11 2 MR. McGUIRE: Since I'm not going to ask him  
14:23:14 3 to read it, I will do that. But he will probably be gone

14:23:18 4 by the time I do it. So.

14:23:19 5 Perhaps we can get you a copy to the court

14:23:25 6 reporter before you get your -- a copy of the transcript

14:23:30 7 to review. And I'll mark it in absencia as 4023a and

14:23:38 8 provide it to the court reporter who will provide it to

14:23:41 9 everybody else. And if there are objections to it at that

14:23:43 10 time, other than the objection now, which, I agree with,

14:23:48 11 is that it's not legible at the margins.

14:23:51 12 THE WITNESS: So are we done with this one?

14:23:53 13 MR. McGUIRE: Just leave it there for right

14:23:55 14 now. We'll be adding a version of it that is readable on

14:24:01 15 the right-hand margin.

14:24:02 16 (Exhibit 4023a was marked for

14:24:02 17 identification.)

14:24:02 18 BY MR. McGUIRE:

14:24:05 19 Q Okay. Let's talk about the document that

14:24:08 20 says "Confidential" on it, the Dr. Wakeham Tobacco and

14:24:14 21 Health R&D Approach presentation on November 15, 1961.

14:24:18 22 (Exhibit 4024 was marked for identification.)

14:24:18 23 MR. STONE: In accordance with the terms of

14:24:20 24 the protective order, this document should be separately

14:24:23 25 bound and all testimony regarding this document will be

14:24:26 26 designated confidential in accordance with the terms of

14:24:28 27 the protective order.

14:24:30 28 That means, among other things, that the

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14:24:32 1 court reporter and the videographer both need to have

14:24:35 2 signed confidentiality undertakings. And I just inquire

14:24:38 3 now whether or not if they have.

14:24:39 4 Off the record is fine.

14:24:45 5 VIDEOGRAPHER: We are off the record. The

14:24:47 6 time is 2:25.

14:24:48 7 (Discussion off the record.)

14:33:30 8 VIDEOGRAPHER: We are back on the record.

14:33:36 9 The time is 2:34.

14:34:06 10 BY MR. McGUIRE:

14:34:06 11 MR. McGUIRE: February -- I'm looking for a

14:34:09 12 February document.

14:34:10 13 4025 for identification is a handwritten

14:34:39 14 letter from J.L. Charles to T.S. Osdene, and I can't read

14:34:49 15 the date, other than it's February 23rd, and it appears to

14:34:53 16 be '80 something or other.

14:34:58 17 THE WITNESS: '82.

14:34:58 18 (Exhibit 4025 was marked for identification.)

14:34:58 19 BY MR. McGUIRE:

14:34:58 20 Q Have you seen this -- first of all, do you

14:35:01 21 recognize Dr. Charles' handwriting?

14:35:03 22 A This appears to be Jim's handwriting.

14:35:05 23 Q Okay. Have you discussed this document

14:35:10 24 either in deposition or in trial testimony in the past?

14:35:12 25 A Yes.

14:35:13 26 Q Okay. Have you discussed this document in

14:35:28 27 particular with Dr. Charles?

14:35:30 28 A No.

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14:35:41 1 Q In your review of documents relating to

14:35:45 2 environmental tobacco smoke, the review that you did at or

14:35:50 3 about the time that you took over that particular area in

14:35:54 4 the company, did you find any documents that were earlier

14:36:01 5 than this document that specifically discussed the issue

14:36:04 6 of sidestream smoke and the potential influence on

14:36:08 7 nonsmokers as is described on page 3 of this document?

14:36:14 8 A Yes.

14:36:14 9 MR. STONE: Objection --

14:36:15 10 THE WITNESS: I'm sorry.

14:36:17 11 MR. STONE: Objection; assumes facts not in

14:36:18 12 evidence, lacks foundation, no basis for reference to the

14:36:23 13 document which is not admissible and to which there has

14:36:26 14 been no showing of authenticity.

14:36:30 15 You can answer.

14:36:31 16 THE WITNESS: Yes. I mean, well, the list we

14:36:34 17 went through on the Philip Morris website lists

14:36:39 18 Dr. Hirayama's work, which was published in '81, on

14:36:43 19 environmental tobacco smoke.

14:36:45 20 BY MR. McGUIRE:

14:36:45 21 Q And you agree with Dr. Charles' statement

14:37:09 22 that cigarette smoke is biologically active?

14:37:12 23 MR. STONE: Objection; lacks foundation, is

14:37:15 24 taken out of context, hearsay. It's an improper use of a

14:37:19 25 document which is not otherwise admissible, vague and

14:37:22 26 ambiguous, improperly calls for opinion testimony.

14:37:24 27 You can answer.

14:37:25 28 THE WITNESS: Myself and other scientists

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14:37:27 1 within Philip Morris, as well as other scientists outside

14:37:31 2 the company, this is something that's been known for quite

14:37:37 3 a long time. So I agree with it, and we use that phrase.

14:37:42 4 Other people use that phrase as well, outside of Philip

14:37:45 5 Morris, outside of the industry.

14:37:46 6 BY MR. McGUIRE:

14:37:46 7 Q And as of 1982, Philip Morris knew very

14:37:50 8 little about the biological activity of sidestream smoke,

14:37:54 9 correct?

14:37:55 10 MR. STONE: Objection; vague and ambiguous

14:37:56 11 with respect to the phrase "very little," lacks

14:37:59 12 foundation, improperly calls for opinion testimony. This

14:38:02 13 witness doesn't have any basis or personal knowledge as to

14:38:05 14 what Philip Morris knew or didn't know in 1982.

14:38:07 15 You can answer as best you know.

14:38:09 16 THE WITNESS: I'm not sure exactly how to

14:38:11 17 answer a question that is -- that is so broad. But Philip

14:38:15 18 Morris had information, as did other people, as to some of

14:38:22 19 the physical and chemical nature -- some of the physical

14:38:26 20 and chemical aspects of the nature of tobacco smoke,

14:38:30 21 including sidestream smoke.

14:38:32 22 And in 1981, you had the Hirayama

14:38:36 23 publications out of -- out of Japan. So I would say

14:38:40 24 Philip -- Philip Morris had some understanding of the

14:38:43 25 chemistry and the physical attributes of sidestream. And

14:38:48 26 based on publications, had other information relating to

14:38:52 27 biological activity. In the case of Dr. Hirayama, it

14:38:58 28 would be in humans.

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14:38:59 1 BY MR. McGUIRE:

14:38:59 2 Q Well, certainly, Dr. Charles would know about

14:39:01 3 those things, wouldn't he, as of 1982?

14:39:04 4 MR. STONE: Objection; argumentative, lacks

14:39:05 5 foundation, calls for speculation.

14:39:06 6 THE WITNESS: In 1982, it was Mr. Charles.

14:39:09 7 BY MR. McGUIRE:

14:39:09 8 Q I'm sorry. Mr. Charles.

14:39:10 9 MR. STONE: Same objections.

14:39:11 10 Do you have the question in mind, or did you

14:40:01 11 answer it?

14:40:01 12 MR. McGUIRE: He didn't answer it.

14:40:03 13 THE WITNESS: Oh. I'm sorry. I thought I

14:40:05 14 did.

14:40:05 15 BY MR. McGUIRE:

14:40:05 16 Q I'm sorry.

14:40:07 17 Dr. Charles, he would know about these things

14:40:10 18 that you mentioned, Dr. Hirayama's work, et cetera,

14:40:13 19 et cetera?

14:40:13 20 A Oh, I'm sorry.

14:40:14 21 MR. STONE: Subject to my prior objections.

14:40:16 22 THE WITNESS: He might have.

14:40:17 23 BY MR. McGUIRE:

14:40:17 24 Q Okay. Do you know why he says in this memo

14:40:19 25 "We know very little about the biological activity of

14:40:22 26 sidestream smoke"?

14:40:23 27 MR. STONE: Objection; lacks foundation,

14:40:25 28 calls for speculation, no personal knowledge. The

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14:40:27 1 document is inadmissible.

14:40:29 2 THE WITNESS: I don't know. I've never

14:40:32 3 spoken to Jim about this.

14:40:33 4 BY MR. McGUIRE:

14:40:33 5 Q When he said "we," did you understand he was

14:40:35 6 talking about Philip Morris?

14:40:37 7 MR. STONE: Same objections. Argumentative

14:40:38 8 as well.

14:40:39 9 THE WITNESS: I mean, that's one -- one way

14:40:40 10 to read this. But I don't -- I don't -- I don't know.

14:40:43 11 BY MR. McGUIRE:

14:40:43 12 Q Was it -- is it Dr. Hirayama?

14:40:55 13 A Yes.

14:40:56 14 Q Was it Dr. Hirayama's work that Mr. Charles

14:41:02 15 described as being the "scientific basis for the

14:41:07 16 statements were not sound, nevertheless, the damage is

14:41:10 17 done," on page 3?

14:41:12 18 MR. STONE: Lacks foundation, calls for

14:41:13 19 speculation, lacks personal knowledge, improper use of a

14:41:20 20 document which is not admissible.

14:41:22 21 THE WITNESS: Can you point me to --

14:41:23 22 BY MR. McGUIRE:

14:41:23 23 Q It's the one, two, three, four, five -- six

14:41:29 24 lines from the bottom.

14:41:34 25 A Where it says "the issue of sidestream"?

14:41:37 26 Q No. The one that says, "and even though the

14:41:40 27 scientific basis for the statements were not sound,

14:41:43 28 nevertheless, the damage is done," period.

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14:41:45 1 A I don't know what --

14:41:47 2 MR. STONE: Same objections.

14:41:49 3 THE WITNESS: Yeah, I don't know what the

14:41:50 4 basis for this statement is.

14:41:52 5 MR. McGUIRE: Let's go to 4026 for

14:42:06 6 identification, a memorandum from Helmut Wakeham to C.H.

14:42:17 7 Goldsmith dated April 7, 1970.

14:42:24 8 THE WITNESS: What's the Bates number?

14:42:26 9 C70-04536?

14:42:30 10 MR. McGUIRE: Yes.

14:42:32 11 THE WITNESS: And that's 4026?

14:42:34 12 MR. McGUIRE: Yes, sir.

14:42:35 13 (Exhibit 4026 was marked for identification.)

14:42:35 14 BY MR. McGUIRE:

14:42:35 15 Q Okay. This document relates to the purchase

14:42:38 16 of INBIFO by Philip Morris.

14:42:47 17 And do you know whether Philip Morris

14:42:49 18 purchased INBIFO so that they could respond to the



14:42:57 19 objection from Lorillard that they were conducting animal  
14:43:01 20 studies in the United States at their facilities in  
14:43:05 21 violation of the gentleman's agreement?  
14:43:07 22 MR. STONE: Objection; assumes facts not in  
14:43:08 23 evidence, argumentative, compound, lacks foundation with  
14:43:13 24 respect to this witness's personal knowledge, calls for  
14:43:17 25 speculation. It's certainly outside the scope of this  
14:43:22 26 witness's designated testimony as well.  
14:43:25 27 BY MR. McGUIRE:  
14:43:25 28 Q If you don't know, you can tell me you don't  
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14:43:28 1 know.  
14:43:29 2 A I don't know.  
14:43:30 3 Q Did you ever meet Dr. Hackenberg?  
14:43:35 4 A Absolutely, yes.  
14:43:36 5 Q Is he a jack of all sciences?  
14:43:38 6 A He's a physician --  
14:43:39 7 MR. STONE: Objection; vague and  
14:43:40 8 ambiguous.  
14:43:40 9 But you can answer.  
14:43:41 10 THE WITNESS: Sorry.  
14:43:42 11 He's a physician, very talented and creative  
14:43:47 12 scientist. I don't know if I would describe him as a jack  
14:43:52 13 of whatever, but a very talented gentleman.  
14:43:58 14 BY MR. McGUIRE:  
14:43:58 15 Q Do you know why Dr. Wakeham described him as  
14:44:02 16 a jack of all sciences?  
14:44:04 17 MR. STONE: Objection; assumes facts not in  
14:44:10 18 evidence, lacks foundation, improper use of a document  
14:44:13 19 that is not admissible, including because there's no  
14:44:17 20 foundation for it.  
14:44:18 21 THE WITNESS: My answer is, no, I don't know  
14:44:21 22 why Dr. Wakeham referred to him that way, other than to  
14:44:26 23 say that he's a very talented -- is a very talented  
14:44:32 24 individual.  
14:44:32 25 BY MR. McGUIRE:  
14:44:32 26 Q The -- have you seen, at the offices of  
14:44:40 27 Philip Morris USA, interoffice correspondence that appears  
14:44:45 28 identical to this copy?  
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14:44:48 1 A No, sir.  
14:44:49 2 Q Do you know whether this type of interoffice  
14:44:53 3 correspondence existed and was used by Philip Morris on or  
14:44:58 4 about the date of this document?  
14:45:02 5 MR. STONE: Objection; lacks personal  
14:45:04 6 knowledge, no foundation, calls for speculation, vague and  
14:45:06 7 ambiguous with respect to the term "type of interoffice  
14:45:09 8 correspondence."  
14:45:11 9 THE WITNESS: I don't know.  
14:45:11 10 BY MR. McGUIRE:  
14:45:11 11 Q Can you recognize Dr. Wakeham's signature at  
14:45:19 12 the bottom of the page?  
14:45:21 13 A No, I -- no, I can't.  
14:45:23 14 Q Did you ever discuss this document with  
14:45:28 15 Dr. Wakeham?  
14:45:28 16 A I've met Dr. Wakeham twice over the period  
14:45:33 17 that I was employed and as a consultant, and it was to --  
14:45:41 18 I was introduced to him, said hello. He said hello. I  
14:45:45 19 said goodbye, and that was it. I did not see this  
14:45:52 20 document during the normal course of my employment at  
14:45:54 21 Philip Morris.  
14:45:55 22 Q You did do some type of historical search  
14:46:04 23 when you took over your job, right, going backwards,

14:46:07 24 touching, reading the documents, discussing things with  
14:46:10 25 the people that wrote the documents? Isn't that true?  
14:46:14 26 A The -- the question you're asking me, the  
14:46:17 27 answer is that relates to scientific -- scientific  
14:46:22 28 questions, scientific documents. I did not go back and  
Vail, Christians & Associates (619)544-8344 336  
14:46:30 1 look at business -- business documents or business type --  
14:46:33 2 type documents.  
14:46:33 3 Q When you did your scientific -- well, Helmut  
14:46:39 4 Wakeham was a scientist at Philip Morris for several  
14:46:42 5 years, wasn't he?  
14:46:44 6 A He was the head of research and development.  
14:46:46 7 Q And in your search, didn't you run across his  
14:46:50 8 signature at least a dozen times?  
14:46:52 9 A Not at INBIFO.  
14:46:54 10 Q I don't care where it was.  
14:46:55 11 Did you run across his signature on original  
14:46:57 12 documents, based on your scientific search, at least a  
14:47:00 13 dozen times?  
14:47:02 14 A I probably did. I have to tell you, I didn't  
14:47:05 15 pay enormous attention to it.  
14:47:06 16 Q Okay.  
14:47:08 17 A I don't know why I would.  
14:47:09 18 Q Let's go to the document also authored by  
14:47:50 19 Dr. Wakeham, December 8, 1970. It would be Exhibit 4027  
14:47:58 20 for identification.  
14:47:58 21 (Exhibit 4027 was marked for identification.)  
14:48:00 22 BY MR. McGUIRE:  
14:48:00 23 Q The CTR is the Council for Tobacco Research;  
14:48:17 24 is that right?  
14:48:18 25 MR. STONE: Objection. The question -- oh, I  
14:48:21 26 see. I see what you meant. No objection. Sorry.  
14:48:26 27 THE WITNESS: As it relates to this memo,  
14:48:29 28 that's correct.  
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14:48:29 1 BY MR. McGUIRE:  
14:48:29 2 Q And J.F. Cullman, III, is he a former CEO of  
14:48:34 3 Philip Morris tobacco -- excuse me -- Philip Morris USA?  
14:48:38 4 A Philip Morris Companies.  
14:48:40 5 Q Philip Morris Companies?  
14:48:41 6 A Yes.  
14:48:42 7 Q Was there ever a Philip Morris Tobacco  
14:48:44 8 Company, as far as you know?  
14:48:46 9 A Not that I'm aware of.  
14:48:47 10 Q And the Philip Morris Companies, are they --  
14:48:50 11 is that the holding company for Philip Morris USA? And I  
14:48:56 12 don't mean any legal significance to holding company.  
14:48:58 13 MR. STONE: Objection; lacks foundation,  
14:49:00 14 outside this witness's area of either designation or  
14:49:04 15 experience.  
14:49:04 16 You can answer based on whatever you do know  
14:49:06 17 or think.  
14:49:07 18 THE WITNESS: I believe so.  
14:49:07 19 BY MR. McGUIRE:  
14:49:07 20 Q Okay. Dr. Wakeham says the following to --  
14:49:17 21 would you say Mr. Cullman was the senior guy at the  
14:49:20 22 company?  
14:49:21 23 A Chairman.  
14:49:21 24 Q Chairman.  
14:49:22 25 So that's the top guy?  
14:49:24 26 A Yes.  
14:49:25 27 Q He says, "Let's face it. We're publicly  
14:49:27 28 and" -- excuse me. "Let's face it. We are interested in

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14:49:30 1 evidence which we believe denies the allegation that  
 14:49:33 2 cigarette smoking causes disease."  
 14:49:35 3 A Where are you, if I might?  
 14:49:37 4 Q One, two, three, four five -- the paragraph  
 14:49:41 5 that starts with No. 2.  
 14:49:44 6 A Uh-huh.  
 14:49:44 7 Q Three or four lines down. You can read the  
 14:49:48 8 whole paragraph to put it in context.  
 14:49:50 9 A This is not Mr. Cullman.  
 14:49:51 10 MR. STONE: Wait for a question.  
 14:49:53 11 THE WITNESS: I'm sorry.  
 14:49:54 12 BY MR. McGUIRE:  
 14:49:54 13 Q This is Helmut Wakeham, the senior scientist,  
 14:49:59 14 talking to the senior operator, telling him, let's face  
 14:50:02 15 it, we're not interested in anything but exculpatory  
 14:50:06 16 evidence?  
 14:50:08 17 MR. STONE: Is that a question?  
 14:50:10 18 MR. McGUIRE: No.  
 14:50:12 19 MR. STONE: Okay. You were just talking?  
 14:50:13 20 MR. McGUIRE: Just talking.  
 14:50:14 21 MR. STONE: Okay. Move to strike counsel  
 14:50:17 22 just talking.  
 14:50:17 23 BY MR. McGUIRE:  
 14:50:17 24 Q Have you had a chance to read that?  
 14:50:20 25 A Yes.  
 14:50:21 26 Q Is it -- do you believe that that correctly  
 14:50:26 27 outlines the objective of the R&D Department for Philip  
 14:50:32 28 Morris as of the time that this document was written?  
 Vail, Christians & Associates (619)544-8344 339  
 14:50:35 1 MR. STONE: Objection; lacks foundation.  
 14:50:37 2 This witness was not employed at Philip Morris in 1970.  
 14:50:41 3 The question calls for speculation. It's an improper use  
 14:50:43 4 of a document which is not otherwise admissible. Outside  
 14:50:46 5 the area on which this witness has been designated to  
 14:50:49 6 testify. Outside the scope of any of the issues in this  
 14:50:51 7 case and not reasonably calculated to lead to the  
 14:50:54 8 discovery of admissible evidence. Clearly an abuse of the  
 14:50:56 9 deposition process and your notice of deposition.  
 14:50:59 10 You can answer, if you know.  
 14:51:02 11 MR. MILES: Also vague as worded.  
 14:51:05 12 THE WITNESS: I can't speak to the context or  
 14:51:06 13 the content or the meaning of what is written here by  
 14:51:10 14 Dr. Wakeham in 1970 to Mr. Cullman.  
 14:51:14 15 BY MR. McGUIRE:  
 14:51:14 16 Q Do you agree that the task of proving that  
 14:51:21 17 cigarette smoking does not cause disease is extremely  
 14:51:24 18 difficult?  
 14:51:25 19 MR. STONE: Same objections and improper use  
 14:51:28 20 of the document which is inadmissible, and it's outside  
 14:51:34 21 the scope of this witness's designation and outside the  
 14:51:36 22 scope of the issues in this case which relate to ETS.  
 14:51:41 23 It's also asked and answered yesterday in discussions of  
 14:51:44 24 the null hypothesis.  
 14:51:47 25 You can answer it.  
 14:51:50 26 THE WITNESS: It is true that one cannot  
 14:51:53 27 prove a negative.  
 14:51:55 28 BY MR. McGUIRE:  
 Vail, Christians & Associates (619)544-8344 340  
 14:51:55 1 Q Are you saying it's impossible?  
 14:52:00 2 MR. STONE: Objections as previously stated.  
 14:52:05 3 Also argumentative.  
 14:52:10 4 THE WITNESS: I think both scientifically and

14:52:13 5 philosophically, it would seem to be impossible, but I  
14:52:18 6 have -- I have -- I have learned that it may be, as he  
14:52:31 7 says, extremely difficult, if that comes close to being  
14:52:38 8 impossible as one can get.  
14:52:39 9 BY MR. McGUIRE:  
14:52:39 10 Q Do you agree if, in fact, the tobacco  
14:52:42 11 industry was able to prove a negative in 30 years  
14:52:45 12 regarding cigarette smoking, that they could do the same  
14:52:47 13 thing regarding environmental tobacco smoke?  
14:52:50 14 MR. STONE: Same objections. Also vague and  
14:52:53 15 ambiguous and compound, assumes facts not in evidence.  
14:52:56 16 THE WITNESS: As far as I know, they haven't  
14:52:59 17 with regard to mainstream smoke.  
14:53:05 18 And it probably holds true for environmental  
14:53:13 19 tobacco smoke, but at least in terms of the time I was  
14:53:16 20 with the company, this was not a motivational driver for  
14:53:22 21 what we were doing.  
14:53:24 22 BY MR. McGUIRE:  
14:53:24 23 Q How much of the -- in your estimation, how  
14:53:31 24 much of the research that has been funded by Philip Morris  
14:53:34 25 into ETS has been devoted to getting Philip Morris, quote,  
14:53:39 26 off the hook, close quote, as that term is used by  
14:53:42 27 Dr. Wakeham on Rational No. 2 on the second page?  
14:53:46 28 MR. STONE: Object. It lacks foundation.  
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14:53:48 1 This witness wouldn't know how Mr. Wakeham was using the  
14:53:51 2 words. Calls for speculation. It's an improper use of a  
14:53:54 3 document, which is inadmissible. Vague and ambiguous.  
14:53:57 4 It's argumentative, and it assumes facts not in evidence.  
14:54:01 5 THE WITNESS: Rational No. 2?  
14:54:03 6 BY MR. McGUIRE:  
14:54:03 7 Q Yes.  
14:54:04 8 A As far as -- as far as I know, personally,  
14:54:14 9 this was not any part of anything we were doing and/or  
14:54:19 10 funding.  
14:54:20 11 Q Has -- has the company ever adopted Option  
14:54:35 12 B?  
14:54:37 13 MR. STONE: Objection.  
14:54:38 14 BY MR. McGUIRE:  
14:54:38 15 Q -- as described by Dr. Wakeham further on  
14:54:41 16 down that page --  
14:54:43 17 MR. STONE: Objection; assumes facts not in  
14:54:44 18 evidence, lacks foundation, calls for speculation,  
14:54:46 19 improper use of an inadmissible document.  
14:54:49 20 BY MR. McGUIRE:  
14:54:49 21 Q -- as it relates to ETS?  
14:54:52 22 A I've never had any interaction with CTR,  
14:54:57 23 other than knowing two of the scientists on the outside  
14:55:00 24 SAB before I came to Philip Morris. I know none of the  
14:55:04 25 particulars. Though, I have seen lists of the scientists  
14:55:08 26 that have gotten money in the publications that issued  
14:55:12 27 forth. That's the level of my knowledge of CTR. So I  
14:55:17 28 have no knowledge that would enable me to answer this  
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14:55:21 1 question, as you have raised it to me.  
14:55:23 2 Q Have you explored with any officer or  
14:55:28 3 director -- any other officer or director of Philip Morris  
14:55:32 4 the answer to the question posed by Dr. Wakeham, as  
14:55:38 5 follows: "How long will it take for witnesses to acquire  
14:55:42 6 the taint of industry money?"  
14:55:46 7 MR. STONE: Objection; lacks foundation,  
14:55:47 8 calls for speculation, improper use of an inadmissible  
14:55:52 9 document, beyond the scope on which this witness has been

14:55:55 10 designated to testify, assumes facts not in evidence,  
14:55:58 11 argumentative.

14:55:59 12 THE WITNESS: I haven't.

14:55:59 13 BY MR. McGUIRE:

14:55:59 14 Q Was the taint of industry money one of the  
14:56:02 15 criteria used when you dropped several scientists when you  
14:56:05 16 took over the ETS program?

14:56:06 17 A No.

14:56:07 18 MR. STONE: Objection; vague and ambiguous.  
14:56:08 19 You can answer.

14:56:09 20 THE WITNESS: No, sir. I gave you the  
14:56:10 21 reasons that -- at least two of the reasons, the main  
14:56:14 22 reasons why some people dropped off that list.

14:56:16 23 BY MR. McGUIRE:

14:56:16 24 Q Well, was the taint of industry one of the  
14:56:21 25 reasons you didn't give me?

14:56:23 26 MR. STONE: Same objections.

14:56:24 27 THE WITNESS: No.

14:56:25 28 BY MR. McGUIRE:

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14:56:37 1 Q Does Dr. Wakeham still live in Richmond?

14:56:39 2 A If not in Richmond, in the Richmond area.

14:56:43 3 Q Have you ever read any depositions or trial  
14:56:52 4 testimony about Dr. Wakeham?

14:56:54 5 A No.

14:56:59 6 Q Are you aware of -- are you aware of any  
14:57:15 7 psychosocial studies on the positive benefits of smoking?

14:57:20 8 MR. STONE: Objection; vague and ambiguous,  
14:57:22 9 outside the scope on which this witness has been  
14:57:24 10 designated to testify which I think relates to issues of  
14:57:27 11 ETS, not active smoking.

14:57:30 12 You can answer.

14:57:31 13 THE WITNESS: Actually, we talked about that  
14:57:33 14 earlier with the discussion of the ARISE program and  
14:57:37 15 Dr. Warburton.

14:57:38 16 BY MR. McGUIRE:

14:57:38 17 Q I thought that was psychophysiological. This  
14:57:40 18 is psychosocial.

14:57:41 19 MR. STONE: I think your word was  
14:57:43 20 psychophysiological. I don't think the witness adopted it  
14:57:46 21 earlier.

14:57:46 22 BY MR. McGUIRE:

14:57:46 23 Q Are you aware of psychophysiological studies  
14:57:51 24 that have been conduct by your company?

14:57:53 25 A Yes.

14:57:53 26 Q Okay. Now I want to talk about psychosocial  
14:57:55 27 ones.

14:57:56 28 Have you conducted any of those?

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14:57:57 1 A We conducted, no, not that I'm aware of.

14:58:05 2 Q There is a list of carbon copy people.  
14:58:12 3 Are any of these individuals still working  
14:58:13 4 for the company, if you know?

14:58:22 5 A I don't believe so.

14:58:37 6 And by that, you mean as employees?

14:58:39 7 Q Well, no.

14:58:43 8 How about as consultants as well, with  
14:58:46 9 confidentiality agreements?

14:58:49 10 A Well, I don't know about the confidentiality  
14:58:52 11 agreements, but Mr. Goldsmith has appeared from time to  
14:58:59 12 time in Richmond to discuss some things with the  
14:59:07 13 operations people, including research and development.  
14:59:13 14 That's it.

14:59:14 15 Q Have you signed a confidentiality agreement  
14:59:17 16 with the company?  
14:59:19 17 A With my consulting agreement? Yes.  
14:59:21 18 Q Yes.  
14:59:22 19 A Yes.  
14:59:22 20 Q Let's go to 4028 for identification, which  
14:59:48 21 would be the Dunn October '77 Smoker Psychology Program  
14:59:53 22 Review.  
15:00:03 23 (Exhibit 4028 was marked for identification.)  
15:00:03 24 BY MR. McGUIRE:  
15:00:03 25 Q Do you know Mr. Dunn?  
15:00:04 26 A No, I don't.  
15:00:06 27 Q Have you reviewed this document in the past?  
15:00:11 28 A Only as a result of litigation.  
Vail, Christians & Associates (619)544-8344 345  
15:00:13 1 Q Are any of the handwritten notes on this copy  
15:00:20 2 of this document yours?  
15:00:24 3 A I don't believe so, but I -- I don't think so.  
15:00:28 4 Q Okay. This memorandum -- do you know whether  
15:00:34 5 this memorandum was authored by Mr. Dunn or not?  
15:00:37 6 MR. STONE: Objection; lacks foundation,  
15:00:38 7 calls for speculation.  
15:00:40 8 THE WITNESS: I don't know.  
15:00:40 9 (Whereupon confidential proceedings  
15:00:40 10 commenced, page 347.)  
11  
12  
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Vail, Christians & Associates (619)544-8344 346  
15:00:40 1 (Confidential proceedings begin.)  
15:00:40 2 BY MR. McGUIRE:  
15:00:40 3 Q The statement is made here, "First, every  
15:00:45 4 undertaking has to have some mission." And "I would state  
15:00:48 5 our charter from Philip Morris in this fashion: "Study the  
15:00:52 6 psychology of the smoker in search of information that can  
15:00:55 7 increase corporate profits."  
15:00:59 8 Has that charter been changed?  
15:01:02 9 MR. STONE: Object to the improper use of a  
15:01:04 10 document which is inadmissible and for which there is no  
15:01:07 11 foundation, assumes facts not in evidence, lacks  
15:01:10 12 foundation, calls for speculation, outside the scope on  
15:01:12 13 which this witness has been designated to testify.  
15:01:15 14 Outside the scope of any of the issues raised by the  
15:01:17 15 notice of deposition.  
15:01:19 16 MR. MILES: Also assumes facts.  
15:01:21 17 Has this been marked "confidential" so that  
15:01:26 18 we have to have people sign off on this?  
15:01:29 19 MR. STONE: Now that you point it out, I see

15:01:31 20 that it does.

15:01:31 21 MR. McGUIRE: It is. I do too. So let's

15:01:33 22 just put this off to the side. He didn't answer the

15:01:37 23 question, did he?

15:01:38 24 MR. STONE: No. But I'll mark the portion of

15:01:38 25 the transcript "confidential" where the question is asked.

15:01:45 26 MR. McGUIRE: I quoted it. Yeah.

15:01:46 27 MR. STONE: Just put it off to one side.

15:01:46 28 (Confidential proceedings end.)

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15:01:46 1 MR. McGUIRE: This next one, although you

15:01:53 2 can't read it, looks to me like it says "Confidential."

15:01:56 3 The Panzer letter on the Roper proposal.

15:02:03 4 THE WITNESS: Do we put that off to one side?

15:02:05 5 MR. McGUIRE: Yes, sir. I'll mark it, but

15:02:09 6 just put it over somewhere.

15:02:11 7 THE WITNESS: And that's May 1st, 1972?

15:02:14 8 MR. McGUIRE: Yes.

15:02:15 9 MR. STONE: Yes. That's what it is.

15:02:16 10 (Exhibit 4029 marked for identification.)

15:02:22 11 BY MR. McGUIRE:

15:02:22 12 Q Let's talk about the September 22nd, 1959

15:02:50 13 Wakeham to Roper memorandum.

15:02:54 14 A That's the one that's an opinion on cigarette

15:02:57 15 smoking and cancer?

15:02:58 16 Q Yes.

15:02:59 17 A And we're going to call that 4030?

15:03:02 18 Q That would be great.

15:03:03 19 (Exhibit 4030 was marked for identification.)

15:03:06 20 BY MR. McGUIRE:

15:03:06 21 Q Have you seen this document before?

15:03:15 22 A If I have, it's only as a consequence of

15:03:18 23 litigation.

15:03:19 24 Q Doesn't this appear to be a blueprint to

15:03:28 25 exactly what the position is now some 41 years later on

15:03:34 26 ETS?

15:03:35 27 MR. STONE: Objection; lacks foundation,

15:03:36 28 calls for speculation, assumes facts not in evidence,

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15:03:40 1 vague and ambiguous, improper use of a document for which

15:03:42 2 there's no foundation. And it's not admissible.

15:03:46 3 THE WITNESS: Can you point me to --

15:03:49 4 BY MR. McGUIRE:

15:03:49 5 Q The whole document.

15:03:50 6 A Well --

15:03:51 7 Q As far as I see, this whole document is more

15:03:53 8 or less a blueprint, a 41-year preview. Although this is

15:03:57 9 on cigarette smoking and cancer, it seems to have the same

15:04:00 10 ring to it and arguments to it that I heard you make over

15:04:06 11 the last day and a half regarding ETS and cancer and

15:04:11 12 several other diseases.

15:04:13 13 Have you had a -- you did -- you've never

15:04:17 14 seen this before?

15:04:18 15 MR. STONE: Move to strike. Move to strike

15:04:23 16 counsel's closing argument in the form of colloquy.

15:04:26 17 MR. McGUIRE: Well, my colloquy is inviting

15:04:29 18 you to take a moment to read the letter and tell me

15:04:32 19 whether you agree with me or not.

15:04:33 20 THE WITNESS: Well, again, if I've seen this,

15:04:36 21 it's only as a result of litigation. To sit here and read

15:04:45 22 this and be able to answer questions intelligently would

15:04:50 23 take more than a few moments. If you'll allow me the time

15:04:57 24 to read it.

15:04:58 25 MR. McGUIRE: Sure. I'll let you read it.

15:05:01 26 MR. STONE: Should we go off the record?

15:05:05 27 MR. McGUIRE: That would probably be

15:05:07 28 prudent. I'll tell you what we'll do. We'll go off the  
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15:05:10 1 record all at one time. Let's mark this, we did, as

15:05:13 2 4030. We'll go through the rest of the documents, because

15:05:16 3 there may be others that you want to read.

15:05:20 4 THE WITNESS: So I just put this aside?

15:05:23 5 MR. McGUIRE: Yes, sir.

15:05:25 6 THE WITNESS: All right.

15:05:28 7 MR. McGUIRE: The next document is really,

15:05:31 8 apparently, two documents added together. The first three

15:05:36 9 pages have to do with -- and this apparently was an

15:05:41 10 exhibit to some proceeding you were involved in. As I

15:05:45 11 see, Exhibit No. 1, Carchman, 10/23/97. "Response to

15:05:50 12 Questions about Additional Parameters of Addiction." And

15:05:52 13 then it goes on for three pages, including bullet

15:05:58 14 statement responses generated from Carchman's 4/11/94

15:06:03 15 meeting.

15:06:04 16 We had a previous earlier document this

15:06:07 17 morning or this afternoon that discussed you -- I'm

15:06:11 18 sorry. It wasn't you. It had to do with tar, not

15:06:15 19 addiction.

15:06:16 20 BY MR. McGUIRE:

15:06:16 21 Q Didn't, at one point in time, you represent

15:06:18 22 the company in any proceedings with respect to the

15:06:21 23 company's position on addiction?

15:06:23 24 A I've been asked questions in litigation about

15:06:25 25 addiction.

15:06:26 26 Q Do you recognize the first three pages of

15:06:28 27 this document as being one that you -- well, the first two

15:06:35 28 pages, this Response to Questions about Additional  
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15:06:41 1 Parameters of Addiction. We'll mark that as Exhibit 4031.

15:06:44 2 MR. STONE: The first two pages?

15:06:45 3 MR. McGUIRE: The first two pages.

15:06:47 4 (Exhibit 4031 was marked for identification.)

15:06:49 5 BY MR. McGUIRE:

15:06:49 6 Q And I'll ask you whether you've seen this

15:06:54 7 before.

15:06:54 8 A I may have. I mean, I've seen things with

15:07:04 9 these titles and these kind of words before, either in

15:07:08 10 documents, papers, or in textbooks.

15:07:10 11 Q Did you prepare this document?

15:07:11 12 A I don't know. Probably not.

15:07:13 13 Q Do you disagree with any of the statements

15:07:18 14 made in the document?

15:07:20 15 A I don't know.

15:07:20 16 MR. STONE: Objection; improperly calls for

15:07:22 17 opinion testimony, lacks foundation.

15:07:27 18 THE WITNESS: I would need to take a look at

15:07:29 19 it.

15:07:29 20 These two pages?

15:07:30 21 MR. McGUIRE: Yes.

15:08:18 22 THE WITNESS: I would -- my only comment on

15:08:20 23 this is though what's in here appears to be true, it's

15:08:28 24 incomplete. There are additional things that have come

15:08:34 25 to -- come to light scientifically that I would -- if I

15:08:41 26 were involved in something like this, I would want to

15:08:45 27 add -- add to this, these two pages that's here.

15:08:49 28 BY MR. McGUIRE:  
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15:08:49 1 Q Well, for example, do you agree that because  
15:08:57 2 the doses in studies were ten to a thousand times higher  
15:09:04 3 than could be expected to be seen in humans, the relevance  
15:09:08 4 of those findings should be questioned?  
15:09:15 5 A I think that whether we're talking about  
15:09:17 6 nicotine addiction or something else, that is an issue  
15:09:21 7 that anybody who reads it who has a critical eye would  
15:09:26 8 raise. I think that's a reasonable -- reasonable question  
15:09:30 9 to raise.  
15:09:30 10 Q Your studies with rats involve doses that are  
15:09:37 11 up to a hundred times higher, right?  
15:09:40 12 MR. STONE: Objection; vague and ambiguous.  
15:09:42 13 THE WITNESS: If you mean by my study with  
15:09:44 14 rats, you mean the work that was done in R&D?  
15:09:48 15 BY MR. McGUIRE:  
15:09:48 16 Q Yes, sir. I didn't mean you in particular.  
15:09:52 17 A If you want to spend a moment talking about  
15:09:55 18 that, I could sum up the work that was done with regard to  
15:09:59 19 Dr. Denoble and Dr. Mele as being, at best, totally  
15:10:03 20 derivative, since all of the work they were doing had been  
15:10:06 21 done and published by others, using better and more  
15:10:10 22 appropriate animal models than the ones that they were  
15:10:15 23 using. It eludes me at this moment precisely what they  
15:10:19 24 were doing with that particular aspect of their studies.  
15:10:26 25 VIDEOGRAPHER: Excuse me. I need to do a  
15:10:29 26 tape change.  
15:10:30 27 MR. McGUIRE: Can you take a second, or right  
15:10:34 28 now?  
Vail, Christians & Associates (619)544-8344 352  
15:10:34 1 VIDEOGRAPHER: One minute.  
15:10:35 2 BY MR. McGUIRE:  
15:10:35 3 Q Isn't this the same response that the CEOs  
15:10:39 4 from tobacco gave to Congress when they all stood up and  
15:10:42 5 said nicotine is not an addictive substance?  
15:10:44 6 MR. STONE: Objection; lacks foundation,  
15:10:46 7 calls for speculation, argumentative.  
15:10:47 8 THE WITNESS: No.  
15:10:48 9 MR. McGUIRE: Okay. You can do that now.  
15:10:51 10 Thanks.  
15:10:52 11 VIDEOGRAPHER: We are off the record. This  
15:10:53 12 concludes Tape 2 of the deposition, and the time is 3:11.  
15:10:58 13 (Discussion off the record.)  
15:17:06 14 VIDEOGRAPHER: We are on the record. This  
15:17:11 15 begins Tape 3 of the Volume II deposition of Richard  
15:17:14 16 Carchman, and the time is 3:17.  
15:17:18 17 (Exhibit 4032 was marked for identification.)  
15:17:18 18 BY MR. McGUIRE:  
15:17:18 19 Q Let's go to Exhibit 4032 for identification,  
15:17:23 20 which is entitled "Bullet Statement Responses generated  
15:17:26 21 from Carchman's 4/11/94 Meeting."  
15:17:29 22 Do you recognize this document?  
15:17:30 23 A No, I don't.  
15:17:35 24 Q Do you have a recollection of either  
15:17:38 25 attending or having a meeting on or about this date where  
15:17:41 26 the subject matter of addiction was discussed?  
15:17:44 27 A I don't.  
15:17:49 28 Q Has your position on addiction changed since  
Vail, Christians & Associates (619)544-8344 353  
15:17:53 1 this document was authored?  
15:17:55 2 MR. STONE: Objection; vague and ambiguous  
15:17:55 3 with respect to when the document was authored, lacks  
15:17:59 4 foundation, overbroad.  
15:18:03 5 THE WITNESS: I don't -- I don't know where

15:18:04 6 this came from. 4/11/94, I may have been on medical leave.  
15:18:22 7 BY MR. McGUIRE:  
15:18:22 8 Q Does that mean you may not have as well?  
15:18:33 9 A This -- this period of time, this is around  
15:18:36 10 the time of the Waxman -- the Waxman hearings. I believe  
15:18:42 11 I was in the hospital. But I would have to go back and  
15:18:45 12 look.  
15:18:45 13 In any event, this is consistent with the  
15:18:48 14 time frame I was on medical leave. Where this document  
15:18:53 15 came from, I don't know. And it says "from Carchman's  
15:19:01 16 Meeting." And this doesn't necessarily represent what  
15:19:06 17 Carchman is saying, as this is some sort of representation  
15:19:10 18 of some meeting that occurred, according to this, I  
15:19:15 19 believe, on the 11th of April 1994.  
15:19:18 20 Q I believe, at least my memory is, when I  
15:19:27 21 asked you a question about whether either nicotine or  
15:19:30 22 cigarette smoking was addictive yesterday, you said, yes,  
15:19:33 23 it was.  
15:19:33 24 A What I said was as the term is commonly  
15:19:37 25 used. And I think the question was cigarette smoking, and  
15:19:41 26 not nicotine.  
15:19:41 27 Q Okay. And if I make the question nicotine,  
15:19:46 28 does that change your answer?  
Vail, Christians & Associates (619)544-8344 354  
15:19:48 1 A I don't know the answer to whether nicotine  
15:19:51 2 is -- nicotine is addicting.  
15:19:52 3 Q Did you at one time take the position that  
15:19:55 4 nicotine was not addictive?  
15:19:57 5 A If I took a position, it probably was that I  
15:20:03 6 didn't know whether it was or wasn't addictive.  
15:20:06 7 Q Okay. Did you ever take a position that  
15:20:08 8 cigarette smoking wasn't addictive?  
15:20:11 9 A I think I -- I concluded -- in fact, I have  
15:20:19 10 stated in previous testimony that for some individuals,  
15:20:26 11 it's very hard to stop smoking. And for some individuals,  
15:20:31 12 it may even be related to nicotine. Though, there are  
15:20:34 13 clearly other factors. And my own personal view was that  
15:20:39 14 for some of those individuals, they may -- may be viewed  
15:20:42 15 as being addicted.  
15:20:44 16 Q Does Philip Morris agree today that cigarette  
15:20:47 17 smoking is addictive?  
15:20:49 18 MR. STONE: Objection; asked and answered  
15:20:50 19 yesterday.  
15:20:50 20 THE WITNESS: As the term is commonly used, yes.  
15:20:53 21 BY MR. McGUIRE:  
15:20:53 22 Q Define for me what you mean is the common  
15:20:57 23 definition of, quote, addictive, close quote?  
15:21:01 24 A Repetitive -- repetitive behavior in light of  
15:21:08 25 awareness of harm that would be associated with the  
15:21:14 26 continued use or that continued behavior.  
15:21:23 27 MR. McGUIRE: Okay. Now, this would be a  
15:21:24 28 good time -- we just didn't get it to work out right, in  
Vail, Christians & Associates (619)544-8344 355  
15:21:28 1 terms of confidential and nonconfidential. Let me see if  
15:21:32 2 there's anything else I can do before we get to  
15:21:34 3 confidential documents.  
15:21:35 4 MR. STONE: Dr. Carchman, the videographer  
15:21:54 5 wants you to slide to your left.  
15:21:55 6 MR. McGUIRE: There are a couple of areas of  
15:22:16 7 previous testimony. You can take that. I'll give this to  
15:22:20 8 your attorney. I want to ask you about it. I don't know  
15:22:32 9 if I have three copies. I may just have two.  
15:22:35 10 BY MR. McGUIRE:

15:22:35 11 Q This is testimony that you gave in the Dunn  
15:22:42 12 and Wiley case in March of 1998. I'd like to draw your  
15:22:51 13 attention to your testimony on page 7693, line 4.  
15:23:00 14 "Is there a question?  
15:23:02 15 "Question: My question is: Don't you know  
15:23:04 16 that the company that you're with has taken the position  
15:23:06 17 that there is a scientific controversy about environmental  
15:23:11 18 tobacco smoke and this ability to cause lung cancer in  
15:23:13 19 nonsmokers?"  
15:23:15 20 Your answer was on page (sic) 11.  
15:23:16 21 Was that your answer at the time?  
15:23:17 22 A Yes.  
15:23:19 23 Q Testimony at page 7706, "Question: Have you  
15:23:24 24 ever seen" --  
15:23:24 25 A Hold on.  
15:23:25 26 Q I'm sorry. I don't have that.  
15:23:28 27 What's the next page that you have?  
15:23:29 28 A 7711.  
Vail, Christians & Associates (619)544-8344 356  
15:23:31 1 Q Okay. "Question: Does Philip Morris" --  
15:23:33 2 MR. MILES: Can you hold off. Okay. There's  
15:23:35 3 one copy down here that we're trying to read, okay, which  
15:23:39 4 we have not had a chance to look at.  
15:23:42 5 You only gave us one copy, right, for all  
15:23:44 6 three of us?  
15:23:45 7 MR. McGUIRE: I gave you what I had. One,  
15:23:48 8 two -- I thought I had four copies. But I guess I only  
15:23:51 9 had one.  
15:23:52 10 MR. MILES: All right. You'll have to wait  
15:23:54 11 until we have a chance to take a look at what it is you're  
15:23:56 12 referring to.  
15:23:57 13 What page are you at now?  
15:23:58 14 MR. McGUIRE: I think 7711; is that right?  
15:24:03 15 THE WITNESS: That's the next page I have.  
15:24:05 16 MR. McGUIRE: Lines 11 through 23.  
15:24:16 17 THE WITNESS: 11 through 23?  
15:24:18 18 MR. McGUIRE: Yes.  
15:24:19 19 THE WITNESS: Yes.  
15:24:20 20 MR. MILES: Okay. Go ahead.  
15:24:21 21 BY MR. McGUIRE:  
15:24:21 22 Q The question was: "Does Philip Morris accept  
15:24:24 23 the fact, as reported here, that little children who have  
15:24:28 24 asthma are affected by ETS?"  
15:24:30 25 Was that your answer?  
15:24:31 26 A Yes.  
15:24:31 27 MR. STONE: That wasn't even the question.  
15:24:36 28 MR. MILES: You didn't read it correctly, Counsel.  
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15:24:39 1 BY MR. McGUIRE:  
15:24:41 2 Q "Question: And, Doctor, does Philip Morris  
15:24:45 3 accept or dispute the fact, as reported here, that little  
15:24:48 4 children who have asthma are affected by ETS?"  
15:24:51 5 Is that your answer on line 15?  
15:24:54 6 MR. STONE: Lacks foundation that the  
15:24:56 7 witness would remember whether or not this was his  
15:24:57 8 testimony.  
15:24:59 9 If you do remember whether it was your  
15:25:00 10 testimony, you can say whether it was or wasn't.  
15:25:02 11 If you don't recall, the court allows  
15:25:05 12 Mr. McGuire various options for how to handle prior  
15:25:09 13 testimony.  
15:25:09 14 I would object to the use of this exhibit on  
15:25:11 15 the ground that it's incomplete. It doesn't even include

15:25:16 16 all of the testimony bearing directly on the subject  
15:25:19 17 matter.  
15:25:19 18 You can answer as best you recall.  
15:25:21 19 THE WITNESS: It could have. I don't recall  
15:25:23 20 with any certainty.  
15:25:25 21 BY MR. McGUIRE:  
15:25:25 22 Q Next question: "So you would agree, then,  
15:25:29 23 that there are children in America who are adversely  
15:25:31 24 affected by secondhand smoke?"  
15:25:33 25 Is that your answer on line 23?  
15:25:36 26 MR. STONE: Same objections.  
15:25:38 27 MR. MILES: I'm going to object to the form  
15:25:42 28 of the question as incorporating a question that is,  
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15:25:46 1 itself, objectionable. It assumes facts.  
15:25:53 2 THE WITNESS: Again, my same answer as before.  
15:25:55 3 BY MR. McGUIRE:  
15:25:55 4 Q And if you go to page -- the next page, 7712,  
15:26:01 5 continues the question, "But does your company accept that  
15:26:03 6 there are children in America who are adversely health  
15:26:06 7 affected by secondhand smoke?"  
15:26:09 8 Is that your answer at line 4?  
15:26:12 9 MR. STONE: Objection.  
15:26:12 10 MR. MILES: Counsel, hang on a second.  
15:26:14 11 Can you designate page and line so we have an  
15:26:17 12 opportunity to look at the question before you --  
15:26:19 13 MR. McGUIRE: I did.  
15:26:20 14 MR. MILES: No, you didn't do it. You didn't  
15:26:22 15 give us a beginning line and an ending line. If you did,  
15:26:24 16 I didn't hear it. I think you just said go to the next  
15:26:27 17 page.  
15:26:28 18 So if you can give us an opportunity before  
15:26:30 19 you read the question to the witness for us to make any  
15:26:32 20 objections that we may feel are appropriate, we'd  
15:26:35 21 appreciate it. That's how you do it in a courtroom.  
15:26:37 22 Okay. We ask you that here, okay, since you are  
15:26:41 23 videotaping it.  
15:26:41 24 So what page and lines are you intending to  
15:26:45 25 read to the witness?  
15:26:46 26 MR. McGUIRE: 1 through 4.  
15:26:47 27 MR. MILES: Thank you.  
15:26:48 28 MR. STONE: Object to the question on the  
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15:26:52 1 grounds it's an improper use of prior testimony, if indeed  
15:26:54 2 that's what it is. Lacks foundation, is improper to form,  
15:26:57 3 assumes facts not in evidence.  
15:26:59 4 You can answer as best you recall, if you  
15:27:03 5 were asked that question, if that's the answer you gave, I  
15:27:06 6 guess back about two years ago.  
15:27:08 7 THE WITNESS: Yeah, a little over two years  
15:27:09 8 ago.  
15:27:10 9 MR. MILES: Okay. You can go ahead,  
15:27:12 10 Counsel. Thank you.  
15:27:13 11 MR. McGUIRE: Thank you.  
15:27:14 12 THE WITNESS: This could have been my -- my  
15:27:17 13 answer. It wouldn't surprise me.  
15:27:18 14 BY MR. McGUIRE:  
15:27:18 15 Q Would you answer this question -- question  
15:27:22 16 differently today?  
15:27:24 17 A What, that there --  
15:27:25 18 MR. STONE: Object to the form of the  
15:27:26 19 question on the grounds previously stated.  
15:27:28 20 THE WITNESS: -- that there might be some

15:27:29 21 children that are affected?

15:27:30 22 BY MR. McGUIRE:

15:27:30 23 Q No. That there are. Not that there might

15:27:33 24 be. That there are, without equivocation at all.

15:27:39 25 A I would say, as I said yesterday, there are

15:27:42 26 some children that would be affected.

15:27:44 27 Q That's why I'm asking you this, because this

15:27:46 28 is a little bit of a different answer than the other day.

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15:27:48 1 A Okay.

15:27:49 2 Q What has happened since March of 1998 and

15:27:53 3 today on this particular question that has influenced your

15:27:56 4 response?

15:27:56 5 A Yeah. That's a very important question.

15:28:00 6 Since that time, through the Center for Indoor Air

15:28:05 7 Research, we funded a large series of studies involving

15:28:11 8 human subjects with asthma, and some of them had

15:28:16 9 self-reported sensitivity to tobacco smoke.

15:28:18 10 In addition, the center sponsored a meeting

15:28:23 11 in Jackson Hole with probably some of the most prominent

15:28:29 12 asthma scientists and physicians involved in ETS

15:28:32 13 research. And that meeting resulted in a monograph that

15:28:37 14 was published after this, Dr. Tom Platts-Mills edited it

15:28:46 15 from the University of Virginia, in Charlottesville. And

15:28:51 16 in that, in that monograph and in the studies reported in

15:28:55 17 there, just focusing for a moment on the work of Lehrer

15:29:00 18 out of Tulane down in Louisiana, it became apparent to

15:29:04 19 myself, Dr. Sanders, and Dr. Demsy, that what I had said

15:29:11 20 in '98 based upon this recent scientific evaluation needed

15:29:17 21 to -- needed to change.

15:29:19 22 And based upon that, I think what you see in

15:29:21 23 the website, the Philip Morris website today is, in part,

15:29:27 24 a consequence of that research that the center funded, the

15:29:33 25 monograph that the center supported and published, and

15:29:36 26 some presentations that Ted and Ruth and I made to

15:29:42 27 management in New York.

15:29:43 28 Q Had you received any manuscripts or -- we'll

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15:29:57 1 call them manuscripts, prepublication manuscripts of this

15:30:01 2 work?

15:30:02 3 A No.

15:30:02 4 Q Did you know the work was ongoing at the time

15:30:05 5 that you were testifying?

15:30:09 6 MR. STONE: Objection; vague and ambiguous.

15:30:10 7 But you can answer.

15:30:12 8 THE WITNESS: I knew the Lehrer work was

15:30:15 9 ongoing because that was reviewed scientifically. I knew

15:30:20 10 that the monograph was going to happen because we funded

15:30:26 11 the meeting that was going to take place in Jackson --

15:30:29 12 Jackson Hole.

15:30:30 13 But, again, the lack of omniscience on my

15:30:34 14 part or anyone else's part in the company and being able

15:30:37 15 to predict an outcome from an investigation before the

15:30:40 16 investigation is complete, I would say we were lacking in

15:30:43 17 that -- in that area.

15:30:44 18 BY MR. McGUIRE:

15:30:44 19 Q What's the next page that you have?

15:30:49 20 A 7626.

15:30:52 21 Q Would you read the testimony from lines 1

15:31:03 22 through 11.

15:31:05 23 A To myself?

15:31:06 24 Q Yes.

15:31:07 25 MR. STONE: Object. It's an improper use of

15:31:11 26 the transcript, taken out of context. And it's  
15:31:13 27 incomplete. I ask that the witness be afforded the  
15:31:16 28 opportunity to read all of the testimony bearing on this  
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15:31:19 1 subject matter.  
15:31:32 2 THE WITNESS: 1 through 11?  
15:31:34 3 BY MR. McGUIRE:  
15:31:34 4 Q Yes.  
15:31:35 5 A Or 1 through 10?  
15:31:36 6 Q 1 through 11.  
15:31:37 7 A 1 through 11. Okay.  
15:31:39 8 Q Were those the questions you were asked and  
15:31:42 9 were those the questions you gave?  
15:31:43 10 MR. STONE: Objection; lacks foundation,  
15:31:45 11 calls for speculation on the part of the witness in order  
15:31:47 12 to recall whether this transcript accurately reflects what  
15:31:50 13 happened more than two years ago.  
15:31:52 14 MR. RICHARDSON: I also object on the basis  
15:31:54 15 that the subject matter of the questions and question  
15:31:56 16 relate to topics that are not germane to this action.  
15:32:03 17 THE WITNESS: If this is from the Wiley-Dunn  
15:32:07 18 case and this is indeed my examination on cross, I  
15:32:13 19 wouldn't be surprised that these were my answers. But as  
15:32:15 20 I sit here today, I can't tell you without looking at the  
15:32:18 21 entire document whether it was or it wasn't. I don't  
15:32:21 22 remember.  
15:32:23 23 BY MR. McGUIRE:  
15:32:26 24 Q Have any governments required you to put an  
15:32:29 25 ETS warning on your cigarettes, packages?  
15:32:32 26 A That's generally outside of my area, but I'm  
15:32:35 27 aware of that at least in some places, the answer is yes.  
15:32:39 28 Q What governments?  
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15:32:40 1 A For instance, in France.  
15:32:41 2 Q Any other governments?  
15:32:44 3 A Yes, there are. But as I sit here -- there  
15:32:46 4 are several other governments. As I sit here today, I  
15:32:49 5 can't tell you with a degree of accuracy I would be  
15:32:53 6 comfortable with.  
15:32:54 7 Q Does the warning in France say, if  
15:32:57 8 translated, environmental tobacco smoke causes cancer?  
15:33:00 9 A I don't remember.  
15:33:01 10 Q Okay. What other pages do you have there?  
15:33:04 11 A That's it.  
15:33:04 12 Q That's the last?  
15:33:11 13 Sure, we'll make it an exhibit. 4033 for  
15:33:15 14 identification.  
15:33:16 15 (Exhibit 4033 was marked for identification.)  
15:33:22 16 THE WITNESS: Do we have a clip, because  
15:33:24 17 these are loose.  
15:33:25 18 MR. STONE: Can I get that stapler too.  
15:33:29 19 MR. McGUIRE: Okay. At this point in time,  
15:33:31 20 we should take a brief break, get copies of the  
15:33:36 21 confidentiality agreement. I'm very concerned now that  
15:33:42 22 counsel has left the room without signing this  
15:33:44 23 confidentiality agreement, on his way back to New York.  
15:33:47 24 He obviously heard some of the confidential information.  
15:33:51 25 And he didn't sign the agreement.  
15:33:52 26 MR. STONE: Well, I don't think there's any  
15:33:54 27 reason to be concerned, because he appeared here on behalf  
15:33:56 28 of Philip Morris, and it's a Philip Morris document. We  
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15:34:00 1 don't require our own counsel to sign confidentiality

15:34:03 2 agreements.

15:34:03 3 MR. McGUIRE: I know. But we're not talking

15:34:04 4 about what you require. We're talking about what the

15:34:08 5 judge required. He said all attorneys. So, anyway, let's

15:34:10 6 go off the record. And we'll put another tape in that

15:34:14 7 we'll designate as confidential, if that's okay with

15:34:19 8 everybody. Then we'll go right back on the record.

15:34:22 9 VIDEOGRAPHER: We are off the record. And

15:34:26 10 the time is 3:35.

15:34:28 11 (Recess.)

15:59:45 12 (Whereupon confidential proceedings

15:59:45 13 commenced, pages 366 to 411.)

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15:59:45 1 (Confidential proceedings begin.)

15:59:45 2 VIDEOGRAPHER: We are back on the record.

16:00:32 3 The time is 4:01.

16:00:34 4 BY MR. McGUIRE:

16:00:34 5 Q Exhibit 4024 for identification is entitled

16:00:45 6 "Tobacco and Health R&D Approach," and it's apparently

16:00:49 7 dated November 15, 1961.

16:00:51 8 Is this a document that you reviewed the

16:00:57 9 original of during the period of time that you were going

16:01:00 10 back and getting up to speed on scientific issues in the

16:01:04 11 R&D Department when you joined the company?

16:01:07 12 MR. STONE: Object that this is an incomplete

16:01:09 13 document. There's no authentication for it.

16:01:11 14 You can go ahead and answer as best you know.

16:01:15 15 THE WITNESS: I have reviewed a document

16:01:21 16 like this in normal course of my business with regard to

16:01:25 17 my scientific review, yes. It looks very much like this,

16:01:28 18 if it's not identical to this.

16:01:30 19 BY MR. McGUIRE:

16:01:30 20 Q What was the purpose of reviewing this

16:01:32 21 document?

16:01:33 22 A This document is, in essence, a template for

16:01:45 23 what Dr. Wakeham felt R&D should be working on. It's sort

16:01:51 24 of a concept document, and when I looked at this and

16:01:57 25 saw -- sorry -- saw where we were going and where R&D was,

16:02:04 26 I said to myself, this is sort of a visionary -- there are

16:02:08 27 elements of this that are really quite visionary. So I

16:02:12 28 like this document a lot. It sets the stage for what's

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16:02:15 1 been going on in R&D ever since.

16:02:18 2 Q On page 28 of this -- these are handwritten

16:02:29 3 numbers that appear on the bottom.

16:02:32 4 A I see. Okay.

16:02:33 5 Q There's a chemistry of cigarette smoke that

16:02:38 6 indicates 80 percent of sidestream smoke is in a gas phase

16:02:46 7 and some -- it looks like 8 percent -- well, I can't read  
16:02:52 8 what the top says.  
16:02:53 9 Does that say 84 percent?  
16:02:57 10 A What it -- what it says is 84 percent -- 827  
16:03:03 11 milligrams. That's what it says.  
16:03:08 12 Q What do you understand that to mean?  
16:03:11 13 A I don't know what that number represents.  
16:03:21 14 When I read this, I didn't understand. I just focused on  
16:03:24 15 the bar and the way they broke it out in terms of  
16:03:30 16 composition of gas to particulate, which then comes to 84  
16:03:37 17 percent, which is the same number as the one above. And  
16:03:41 18 I'm assuming that number above, 627 milligrams, is the  
16:03:46 19 summation of the milligrams in the parentheses for both  
16:03:50 20 the gas and particulate.  
16:03:52 21 MR. STONE: I think you misspoke at one point  
16:03:54 22 when you said it was 827.  
16:03:55 23 THE WITNESS: 627 I'm sorry.  
16:04:06 24 BY MR. McGUIRE:  
16:04:06 25 Q And what makes up the other percentage that's  
16:04:09 26 missing --  
16:04:10 27 MR. STONE: Objection; vague and ambiguous,  
16:04:11 28 lacks foundation.  
Vail, Christians & Associates (619)544-8344 367  
16:04:11 1 BY MR. McGUIRE:  
16:04:11 2 Q -- the other 12 percent? Sorry to cut you  
16:04:17 3 off there.  
16:04:17 4 A I think part of the answer to that is found  
16:04:24 5 in some of the subsequent pages --  
16:04:30 6 MR. STONE: Don't guess. I mean, the answers  
16:04:33 7 appear on the page. You add sidestream and mainstream  
16:04:36 8 percentages, I think, if I read the numbers, isn't it?  
16:04:39 9 Doesn't the sidestream say 84 percent?  
16:04:40 10 THE WITNESS: And the mainstream says 16.  
16:04:42 11 MR. STONE: And the mainstream says 16  
16:04:44 12 percent.  
16:04:45 13 THE WITNESS: But the answers are in the  
16:04:46 14 subsequent pages, the particulars. I can't -- I can't  
16:04:51 15 read it all that well.  
16:04:52 16 MR. STONE: I don't mean to testify for you,  
16:04:54 17 but it's gas and sidestream is 80 percent. Particulate is  
16:04:58 18 4. That's 84 percent. Gas and mainstream is 11.2  
16:05:02 19 percent. Particulate is 5.8. That adds up to 17  
16:05:09 20 percent.  
16:05:11 21 THE WITNESS: 16 percent.  
16:05:12 22 MR. STONE: 16 percent. Well, it really  
16:05:15 23 doesn't. It adds up to 17. But, okay. 16. It just  
16:05:20 24 seems to me they divided it between sidestream and  
16:05:23 25 mainstream. But I'll shut up. I'm sorry. I was probably  
16:05:27 26 out of line.  
16:05:27 27 BY MR. McGUIRE:  
16:05:27 28 Q My question had to do with if we are looking  
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16:05:31 1 at 100 percent of sidestream smoke, and we're not  
16:05:34 2 including mainstream smoke in it, what makes up the  
16:05:39 3 missing 16 percent? And is the answer mainstream smoke?  
16:05:44 4 A Yes.  
16:05:44 5 Q Okay.  
16:05:45 6 A Because the header is "Chemistry of Cigarette  
16:05:49 7 Smoke." And so he's dividing it between the two and then  
16:05:55 8 just adding it up.  
16:05:56 9 Q And if this was done today, would this more  
16:06:00 10 accurately be entitled "Chemistry of Environmental Tobacco  
16:06:05 11 Smoke"?



16:06:06 12 MR. STONE: Objection; lacks foundation.

16:06:07 13 THE WITNESS: I don't -- it could, but I

16:06:09 14 don't think so. This -- this is a representation of

16:06:11 15 sidestream smoke -- smoke, not environmental tobacco smoke.

16:06:16 16 BY MR. McGUIRE:

16:06:16 17 Q What's the -- what is the definition of

16:06:27 18 sidestream smoke?

16:06:28 19 A We went through that --

16:06:31 20 Q No, that was ETS.

16:06:33 21 A -- as part of the definition of ETS.

16:06:37 22 Sidestream smoke is the smoke that comes off the cigarette

16:06:41 23 on the inter puff -- the interval between puffs. That's a

16:06:45 24 part of the ETS definition.

16:06:49 25 Q So it doesn't include mainstream smoke?

16:06:52 26 A Sidestream smoke does not include mainstream

16:06:55 27 smoke.

16:06:56 28 Q Except in this diagram?

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16:06:57 1 A No. But --

16:06:57 2 MR. STONE: Objection; argumentative, vague

16:06:59 3 and ambiguous.

16:06:59 4 THE WITNESS: This is -- "Cigarette Smoke" is

16:07:03 5 the header. And cigarette smoke from a cigarette in this

16:07:08 6 representation, they have mainstream, and they have

16:07:12 7 sidestream.

16:07:12 8 BY MR. McGUIRE:

16:07:12 9 Q What information was removed from the

16:07:34 10 document at page 33?

16:07:37 11 A I don't know.

16:07:37 12 Q Do you know when this document was first

16:07:46 13 marked "Confidential"? Was the document that you reviewed

16:07:51 14 marked "Confidential"?

16:07:52 15 A If it was, I didn't pay any attention to it.

16:07:54 16 Q Was the document in its original form in a

16:07:57 17 composition-type notebook?

16:08:00 18 A It was a document that was -- it was not the

16:08:05 19 original, unless the original looked like this. It was a

16:08:09 20 copy. It appeared to me to be a copy.

16:08:12 21 Q Do you know what information was removed from

16:08:31 22 page 40?

16:08:34 23 MR. STONE: Objection; assumes facts not in

16:08:35 24 evidence.

16:08:37 25 THE WITNESS: You mean this whiteout area?

16:08:41 26 BY MR. McGUIRE:

16:08:42 27 Q Yeah. That had to do with complications.

16:08:45 28 A I have no idea. The document I read did not

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16:08:50 1 have any -- anything deleted. I mean, there was nothing

16:08:58 2 like this on the document that I read.

16:09:06 3 Q Why is continued -- the fact that continued

16:09:09 4 usage develops tolerance a complication, if you know?

16:09:13 5 MR. STONE: Objection; assumes facts not in

16:09:14 6 evidence, calls for speculation, lacks foundation, vague

16:09:17 7 and ambiguous.

16:09:19 8 THE WITNESS: I don't know what this

16:09:22 9 specifically -- what this is referring to here.

16:09:24 10 BY MR. McGUIRE:

16:09:24 11 Q Do you agree with the last statement that

16:09:30 12 "It's also recognized that smoking produces pleasurable

16:09:33 13 reactions or tranquility, and that this is due in at least

16:09:38 14 in part to nicotine, and not entirely to the physical

16:09:41 15 manipulations involved in smoking"?

16:09:43 16 MR. STONE: Improper use of a document which

16:09:44 17 is not admissible, lacks foundation, assumes facts not in  
16:09:47 18 evidence, compound, vague and ambiguous.

16:09:50 19 THE WITNESS: I have -- I have read reports  
16:09:52 20 where people have suggested that that's one of the things  
16:09:56 21 that's going on.

16:10:00 22 BY MR. McGUIRE:

16:10:03 23 Q Does Philip Morris agree with this  
16:10:06 24 statement?

16:10:06 25 MR. STONE: Same objections. Further object  
16:10:08 26 on the grounds that it's outside any area in which this  
16:10:11 27 witness has been designated to testify. Assumes facts not  
16:10:13 28 in evidence; namely, that Philip Morris has a position on  
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16:10:16 1 that.

16:10:17 2 THE WITNESS: As far as I know, Philip Morris  
16:10:19 3 doesn't have a position on it, and I know that Philip  
16:10:24 4 Morris scientists have discussed the literature that  
16:10:26 5 deals -- that deals with this, this type of -- this type  
16:10:32 6 of question.

16:10:33 7 I have no simple position on this, other than  
16:10:42 8 to cite some of the more recent information from Dr. Ed  
16:10:49 9 #Dominoes group at the University of Richmond. If one  
16:10:55 10 talks about tranquility, there is an interesting body of  
16:11:01 11 data that suggests that schizophrenics that have a very  
16:11:05 12 high smoking prevalence and people who are clinically  
16:11:12 13 depressed smoke a lot of cigarettes, that there's  
16:11:14 14 something in the smoke. Some people suggest it's  
16:11:17 15 nicotine, and others have clearly indicated that it's not  
16:11:20 16 nicotine that is, in part, what's responsible for these --  
16:11:26 17 these kinds of activities.

16:11:27 18 In terms of people who aren't depressed or  
16:11:30 19 schizophrenic with regard to cigarette smoking, people,  
16:11:34 20 for instance, as Dr. Warburton has written, has shown,  
16:11:40 21 increase in short-term memory, increase in certain kinds  
16:11:43 22 of intellectual tasks which he believe -- believes may  
16:11:51 23 contribute to some of the pleasurable aspects that people  
16:11:57 24 derive from smoking.

16:11:58 25 BY MR. McGUIRE:

16:12:00 26 Q Is the pleasure that smoking gives you the  
16:12:03 27 satisfaction of the urge for or demand of the body for  
16:12:06 28 nicotine?

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16:12:07 1 MR. STONE: Objection; outside the area in  
16:12:09 2 which this witness has been designated to testify.  
16:12:12 3 Improperly calls for opinion testimony, vague and  
16:12:14 4 ambiguous, lacks foundation.

16:12:17 5 THE WITNESS: Actually, I think that's a  
16:12:20 6 very important question. And in the issue of the Journal  
16:12:24 7 Tobacco Control in 1999, multiple authors, including  
16:12:28 8 authors from the National Institute on Drug Abuse and  
16:12:32 9 Dr. Jack Keningfield, former director from Nyda, did a  
16:12:37 10 very important study that I think goes directly to the  
16:12:41 11 heart of your question.

16:12:41 12 He took 20 smokers, ten men, ten women,  
16:12:46 13 double-blind study. He got them to abstain from smoking  
16:12:50 14 for three hours and overnight, and then unbeknownst to the  
16:12:53 15 investigator or to the individuals, he randomly -- they  
16:12:57 16 randomly assigned two kinds of cigarettes, and each group  
16:13:02 17 had -- the way this was done -- had an opportunity to do  
16:13:06 18 all of this.

16:13:06 19 One group of cigarettes was a regular  
16:13:09 20 cigarette in terms of tar and nicotine. The other  
16:13:12 21 cigarette was fully denicotinized. So it had no nicotine

16:13:16 22 in the filler, no nicotine in the smoke.  
16:13:19 23 Then either after three hours of abstinence  
16:13:23 24 or overnight abstinence, they measured withdrawal symptoms  
16:13:27 25 which had been felt for a long time to be the reason, as  
16:13:30 26 your question might -- might suggest is the reason people  
16:13:35 27 keep smoking.  
16:13:35 28 And what they found was that there was no  
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16:13:38 1 difference in terms of the withdrawal aspects that they  
16:13:42 2 were measuring in their standardized test -- I think it  
16:13:45 3 was a Fagerstrom type test between the response to  
16:13:50 4 cigarettes with nicotine or without nicotine.  
16:13:52 5 They, therefore, concluded that there's more  
16:13:55 6 to smoking than just nicotine with regard to withdrawal  
16:13:58 7 and urges.  
16:14:01 8 BY MR. McGUIRE:  
16:14:01 9 Q Another one of these "no statistical  
16:14:05 10 difference so let's draw a conclusion studies"?  
16:14:07 11 MR. STONE: Objection; vague and ambiguous.  
16:14:08 12 THE WITNESS: This is the author's conclusion.  
16:14:10 13 BY MR. McGUIRE:  
16:14:10 14 Q Was there a -- when you say there was no  
16:14:13 15 difference, was there a difference but not a statistically  
16:14:17 16 significant difference?  
16:14:19 17 MR. STONE: Same objection.  
16:14:21 18 THE WITNESS: I think -- I don't remember the  
16:14:24 19 precise statistics. I just remember reading the paper and  
16:14:28 20 their conclusion. And their conclusion was that they  
16:14:30 21 could not tell a difference between the withdrawal of  
16:14:35 22 symptomology and the alleviation of that symptomology,  
16:14:40 23 whether the subject smoked cigarettes with or without  
16:14:44 24 nicotine in it. Those were the author's -- the author's  
16:14:47 25 conclusions.  
16:14:48 26 I found it quite -- quite interesting and  
16:14:51 27 actually somewhat compelling.  
16:14:52 28 BY MR. McGUIRE:  
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16:14:52 1 Q On page 43, a statement is made that "Even  
16:14:59 2 though nicotine is believed to be essential to cigarette  
16:15:03 3 acceptability, a reduction in level may be desirable for  
16:15:07 4 medical reasons."  
16:15:08 5 As of 1961, what medical reasons was Philip  
16:15:12 6 Morris aware of as to -- that would be associated with  
16:15:17 7 nicotine?  
16:15:18 8 MR. STONE: Objection; lacks foundation,  
16:15:19 9 calls for speculation, overbroad, vague and ambiguous,  
16:15:21 10 outside any area in which this witness has been designated  
16:15:25 11 to testify.  
16:15:25 12 BY MR. McGUIRE:  
16:15:25 13 Q If you know the answer.  
16:15:26 14 A In that period of time, 1961, there were  
16:15:30 15 medical concerns about the effects of nicotine on the  
16:15:33 16 cardiovascular system. That is no longer listed as a  
16:15:37 17 concern today. But it was at that period of time.  
16:15:40 18 Q Is it -- if you look at page 44, there is a  
16:16:03 19 paragraph or two on reduction of carcinogens, and  
16:16:12 20 Dr. Wakeham says that, in effect -- well, before --  
16:16:19 21 "because carcinogens are found in practically every class  
16:16:24 22 of compounds in smoke," that prohibits complete solution  
16:16:27 23 of the problem of eliminating one or two classes of  
16:16:31 24 compounds. "The best we can hope for is reduce the  
16:16:36 25 particularly bad class." And he says, "i.e. polynuclear  
16:16:42 26 hydrocarbons, or phenols.

16:16:48 27 Is that still the position of Philip Morris?  
16:16:51 28 MR. STONE: Objection on the grounds it's an  
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16:16:52 1 improper use of a document that's not independently  
16:16:55 2 admissible, lacks foundation, is compound, vague and  
16:16:57 3 ambiguous.  
16:17:00 4 THE WITNESS: If by the position of Philip  
16:17:04 5 Morris, in the product department we continue to -- and at  
16:17:09 6 this point, Accord represents the height of what we've  
16:17:12 7 been able to achieve, have been reducing the classes of  
16:17:16 8 these chemicals and many more that are listed here.  
16:17:20 9 So I guess the short answer is yes, but we've  
16:17:24 10 gone way beyond this.  
16:17:25 11 BY MR. McGUIRE:  
16:17:25 12 Q Let's take it one by one.  
16:17:28 13 Do you agree as of now that there are  
16:17:30 14 carcinogens in practically every class of compound in  
16:17:34 15 smoke?  
16:17:34 16 MR. STONE: Same objections.  
16:17:37 17 THE WITNESS: I -- I agree that approximately  
16:17:40 18 four to five dozen carcinogens have been identified in  
16:17:45 19 tobacco smoke.  
16:17:46 20 BY MR. McGUIRE:  
16:17:46 21 Q And do you agree that of those four or five,  
16:17:56 22 they're found in every class of compound or practically  
16:17:59 23 every class of compound in smoke?  
16:18:01 24 MR. STONE: Objection; vague and ambiguous.  
16:18:02 25 BY MR. McGUIRE:  
16:18:02 26 Q Since smoke is a complex mixture of compounds.  
16:18:06 27 MR. STONE: Objection; vague and ambiguous,  
16:18:08 28 lacks foundation, is nonsensical, as phrased.  
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16:18:12 1 THE WITNESS: I -- I really don't  
16:18:15 2 understand -- I don't understand the question. Generally  
16:18:17 3 speaking, I'll go back to that first page we discussed  
16:18:22 4 with particles and gas phase. Things tend to partition in  
16:18:26 5 one or the other. So the polynuclear aromatic  
16:18:30 6 polycarbons, what he calls polynuclear hydrocarbons, are  
16:18:35 7 found in the particle phase. They're not found in the gas  
16:18:39 8 phase.  
16:18:41 9 So I'm not sure I understood your question,  
16:18:44 10 and I'm not sure the way this is written here, it makes a  
16:18:47 11 whole total amount of sense to me now as you ask that  
16:18:51 12 question. But there are carcinogens in the gas phase, and  
16:18:55 13 there are carcinogens in the particle phase. And,  
16:18:59 14 generally speaking, there are different kinds of  
16:19:01 15 carcinogens in those two phases.  
16:19:04 16 BY MR. McGUIRE:  
16:19:04 17 Q In summary, he says on page 48, "Low  
16:19:32 18 irritation and low nicotine cigarettes for commercial  
16:19:36 19 exploitation will be developed in the course of our  
16:19:38 20 present R&D program during the next two to five years with  
16:19:42 21 an expenditure of not more than 25 percent of the R&D  
16:19:46 22 budget during this period."  
16:19:48 23 Did they -- was that goal met, as far as you  
16:19:51 24 know?  
16:19:52 25 MR. STONE: Objection; improper use of the  
16:19:53 26 document for which there's no foundation and is otherwise  
16:19:58 27 admissible. Compound, lacks foundation in general, vague  
16:20:02 28 and ambiguous, outside the area in which this witness has  
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16:20:04 1 been designated to testify.  
16:20:07 2 THE WITNESS: The most -- the easiest way to

16:20:10 3 describe that is to go to the Federal Trade Commission,  
16:20:14 4 National Cancer Institute, FTC monograph No. 7, a chapter  
16:20:20 5 by Hoffmann and Hoffmann entitled "The Changing  
16:20:22 6 Cigarette," in which they have a table by year from 1950  
16:20:27 7 out to 1993 of tar and nicotine deliveries in commercial  
16:20:36 8 products in the United States.

16:20:37 9 And within that chapter, they have tables  
16:20:41 10 that deal with a variety of other smoke constituents that  
16:20:47 11 have been modified, including nicotine, with the  
16:20:50 12 introduction of more porous papers, certain kinds of  
16:20:54 13 filters, and a variety of different kinds of reconstituted  
16:20:58 14 tobacco.

16:20:59 15 So I would say that there's published  
16:21:04 16 evidence that has been reported in the peer-reviewed  
16:21:07 17 literature by a number of scientists, that just being one  
16:21:10 18 example, that not only was that accomplished, those goals  
16:21:15 19 were exceeded. And it wasn't just by Philip Morris,  
16:21:18 20 because the table that's in there is reflecting on the  
16:21:24 21 industries, how the products behave for the industry in  
16:21:28 22 the United States.

16:21:28 23 BY MR. McGUIRE:

16:21:28 24 Q Does Philip Morris manufacture Camels?  
16:21:33 25 A No.  
16:21:33 26 Q That's R.J. Reynolds, if you know?  
16:21:35 27 A I think.  
16:21:36 28 Q Let's go to 4028. This -- again, I forget  
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16:22:23 1 what your answers were, because we disrupted and figured  
16:22:26 2 out this was confidential, once we started. Or we  
16:22:29 3 disrupted the questioning.

16:22:30 4 For background purposes, have you seen this  
16:22:35 5 document before?

16:22:40 6 A If I have, it's as a result of litigation.  
16:22:42 7 Q And when you say "as a result of litigation,"  
16:22:44 8 you mean you were shown it in the course of litigation by  
16:22:47 9 either attorneys for Philip Morris or attorneys for  
16:22:51 10 someone suing Philip Morris?

16:22:53 11 A I believe the latter. I don't know if I've  
16:22:58 12 actually ever seen this particular document, but it sure  
16:23:01 13 does look familiar for something that I've seen before in  
16:23:05 14 litigation.

16:23:07 15 Q In the time that you've -- your answer seems  
16:23:12 16 to indicate that you were never shown any documents to  
16:23:15 17 prepare you for trial or deposition by any attorney  
16:23:18 18 representing Philip Morris?

16:23:20 19 A No. I don't mean to give that impression. I  
16:23:23 20 have been shown Dunn documents that have some words that  
16:23:30 21 are similar to this, for instance, St. Martin. I know  
16:23:36 22 what that's about. I've been shown, I think, at least  
16:23:43 23 two, three, maybe four Dunn documents that speak to these  
16:23:48 24 kinds of issues.

16:23:48 25 Whether I've -- and I've been shown them both  
16:23:51 26 by plaintiffs' lawyers and by Philip Morris lawyers. I  
16:23:57 27 don't believe I have specifically seen this document,  
16:24:01 28 though. I might have. I didn't mean to give that  
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16:24:09 1 impression.

16:24:09 2 Q This document compares smokers to Pavlov's  
16:24:24 3 dog, and on page 4, it says "Consider the smoker. Smoking  
16:24:28 4 a cigarette is the lever press. The effect of that  
16:24:31 5 smoking act upon his person is the reward. That effect  
16:24:35 6 reinforces the smoking act. He comes to push the lever  
16:24:39 7 80" -- -- excuse me -- "10 to 60 times per day."

16:24:42 8 Does that represent R&D's view of the effect  
16:24:47 9 on -- of cigarette smoke on smokers currently?  
16:24:50 10 MR. STONE: Object to counsel's statement as  
16:24:52 11 to what the document does or does not do. Object to the  
16:24:55 12 question on the grounds it's an improper use of a document  
16:24:57 13 to which there's no foundation and which is otherwise  
16:25:01 14 inadmissible. The question is compound, vague and  
16:25:03 15 ambiguous, lacks foundation, well beyond the area in which  
16:25:06 16 this witness has been designated to testify.  
16:25:09 17 THE WITNESS: Not only is this not the  
16:25:11 18 position of R&D, this is the stupidist -- well, actually,  
16:25:20 19 no. I've seen other of his documents that probably rise  
16:25:23 20 above that -- rise above that level. Just incredibly  
16:25:29 21 stupid scientific, if that's what this passes for. It's  
16:25:36 22 just self-puffry of some kind. It infuriates me to read  
16:25:41 23 some of the stuff this character has written.  
16:25:43 24 BY MR. McGUIRE:  
16:25:43 25 Q Was he an employee of Philip Morris?  
16:25:45 26 A Unfortunately, yes.  
16:25:46 27 Q Was he in the R&D program?  
16:25:48 28 A Yes, sir.  
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16:25:48 1 Q Was he the head of the R&D program?  
16:25:51 2 A Absolutely not.  
16:25:52 3 Q What was his job, if you know, during the  
16:25:55 4 time that he was involved at R&D?  
16:25:57 5 A He was a scientist, part of a program. He  
16:26:02 6 wasn't even the head of the program.  
16:26:04 7 Q Was he involved in a smokers' psychology  
16:26:09 8 program?  
16:26:11 9 MR. STONE: Objection; lacks foundation.  
16:26:12 10 THE WITNESS: I don't know.  
16:26:13 11 BY MR. McGUIRE:  
16:26:13 12 Q Where does he live now?  
16:26:15 13 A I think in Richmond, in the Richmond area.  
16:26:17 14 Q Have you ever read deposition testimony of  
16:26:22 15 Mr. Dunn?  
16:26:24 16 A No. But his memos were sufficient -- were  
16:26:29 17 quite sufficient. Thank you.  
16:26:30 18 Q Is he a psychologist or a psychiatrist?  
16:26:33 19 A A psychologist, I believe.  
16:26:34 20 Q Okay. Let's go to 4029. A 1/19/72  
16:27:05 21 memorandum from Horace -- excuse me -- from Fred Panzer to  
16:27:09 22 Horace Kornegay, K-o-r-n-e-g-a-y.  
16:27:12 23 Again, do you recognize this document as  
16:27:17 24 being one that you have reviewed in the past, either  
16:27:22 25 internally as part of your job or as part of your position  
16:27:28 26 in answering questions under oath?  
16:27:30 27 MR. STONE: Objection; compound.  
16:27:33 28 THE WITNESS: I don't believe I've ever seen  
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16:27:35 1 this memo before.  
16:27:38 2 BY MR. McGUIRE:  
16:27:38 3 Q You've heard about the Roper proposal in the  
16:27:41 4 past, haven't you?  
16:27:42 5 A People have mentioned it to me, and my answer  
16:27:45 6 when asked about it was that I didn't know anything about  
16:27:49 7 it.  
16:27:49 8 Q Was Robert Roper an employee of Philip Morris?  
16:27:53 9 A I don't know.  
16:27:54 10 Q It's consistent with the same strategy that  
16:28:12 11 was discussed in the exhibit that we talked about this  
16:28:22 12 morning regarding the ETS strategy in 1988. Holding

16:28:29 13 strategy creating doubt about health change without  
16:28:31 14 actually denying it. Advocating the public's right to  
16:28:35 15 smoke without actually urging them to take up the  
16:28:39 16 practice. And encouraging objective scientific research  
16:28:42 17 as the only way to resolve the question of health hazard.  
16:28:45 18 Would you agree that those three principles  
16:28:48 19 are the same that were discussed in that memorandum?  
16:28:51 20 MR. STONE: Objection; compound. The  
16:28:52 21 documents speak for themselves, lacks foundation, calls  
16:28:54 22 for speculation, improper use of two documents, neither of  
16:28:58 23 which is admissible or for which a proper foundation is  
16:29:01 24 laid. Vague and ambiguous.  
16:29:03 25 MR. MILES: It's also argumentative.  
16:29:07 26 THE WITNESS: If you're referring to the  
16:29:10 27 February 17th, 1988 document --  
16:29:15 28 BY MR. McGUIRE:  
Vail, Christians & Associates (619)544-8344 382  
16:29:15 1 Q I think it's 4029.  
16:29:18 2 A -- then I would say --  
16:29:23 3 MR. STONE: This is 4029, Mr. McGuire, that  
16:29:26 4 we're looking at right now.  
16:29:27 5 MR. McGUIRE: Okay.  
16:29:28 6 BY MR. McGUIRE:  
16:29:28 7 Q Go ahead.  
16:29:29 8 A That February 17th, 1988 document, I have not  
16:29:32 9 seen before. And as to whether that reflects in any way  
16:29:35 10 Philip Morris' behavior or position, to the best of my  
16:29:39 11 personal knowledge, it does not. So -- and I've never  
16:29:43 12 seen this document before.  
16:29:45 13 I don't know who either of these two  
16:29:49 14 gentlemen are, and I really don't know what the Roper  
16:29:52 15 proposal is. So I can't put this in any kind of context  
16:29:57 16 and be able to relate this to that February 17th, 1988  
16:30:01 17 document. I don't know who these people are.  
16:30:03 18 Q You don't know who Mr. Kornegay or Mr. Panzer  
16:30:07 19 are?  
16:30:07 20 A No, I don't.  
16:30:09 21 Q Do you know what cigarette controversy was --  
16:30:12 22 what the controversy was in 1972 as opposed to other  
16:30:16 23 controversies that have been described in other documents  
16:30:21 24 that we've marked as exhibits today?  
16:30:23 25 MR. STONE: Objection; lacks foundation,  
16:30:24 26 compound, argumentative, improper use of a document that's  
16:30:28 27 not admissible, calls for speculation, outside the scope  
16:30:31 28 of this witness's designation.  
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16:30:33 1 THE WITNESS: I don't know. We're talking  
16:30:35 2 about two documents separated by approximately 16 years,  
16:30:40 3 generated by different people, none of which I believe are  
16:30:45 4 or have been employees of Philip -- that I'm aware of,  
16:30:48 5 employees of Philip Morris. And the use of the word  
16:30:52 6 "controversy" in one document by these people or this  
16:30:54 7 person and the use of "controversy" in another document by  
16:30:57 8 somebody else, I don't know if they're talking about the  
16:30:59 9 same thing in the same way.  
16:31:03 10 BY MR. McGUIRE:  
16:31:05 11 Q There are separate paragraphs for the  
16:31:32 12 litigation front, the political front, and the public  
16:31:36 13 opinion front.  
16:31:39 14 And have you -- I want to know if you've seen  
16:31:44 15 any documents authored after 1972 that deal with the  
16:31:53 16 company's position regarding cigarette controversies that  
16:31:57 17 break down the company's position on those three

16:32:01 18 political -- or those three fronts: litigation,  
16:32:03 19 political, and public opinion.  
16:32:06 20 MR. STONE: Objection; improper use of a  
16:32:08 21 document that's inadmissible, no foundation, compound,  
16:32:12 22 argumentative, overbroad.  
16:32:14 23 THE WITNESS: I don't believe so.  
16:32:15 24 BY MR. McGUIRE:  
16:32:15 25 Q Is it the company's present position that  
16:32:25 26 people who suffer injuries as a result of exposure to  
16:32:31 27 environmental tobacco smoke is as a result of their  
16:32:38 28 constitutional makeup --  
Vail, Christians & Associates (619)544-8344 384  
16:32:40 1 MR. STONE: Objection.  
16:32:41 2 BY MR. McGUIRE:  
16:32:41 3 Q -- being different than the general  
16:32:43 4 population?  
16:32:44 5 MR. STONE: Objection; lacks foundation as to  
16:32:48 6 whether or not there's a company position on that  
16:32:50 7 particular subject, assumes facts not in evidence, vague  
16:32:53 8 and ambiguous, improperly calls for opinion testimony.  
16:32:57 9 MR. MILES: I think it's also overly broad  
16:33:00 10 and an incomplete hypothetical.  
16:33:04 11 THE WITNESS: I don't know the answer to that  
16:33:06 12 question.  
16:33:07 13 BY MR. McGUIRE:  
16:33:07 14 Q Is it -- was it your testimony that some  
16:33:19 15 people suffering injuries as a result -- suffering  
16:33:24 16 asthmatic-type injuries as a result of exposure to ETS was  
16:33:28 17 because they were particularly sensitive and it had to do  
16:33:33 18 with their constitutional makeup?  
16:33:35 19 MR. STONE: Objection; misstates the  
16:33:36 20 witness's prior testimony, vague and ambiguous.  
16:33:39 21 THE WITNESS: What I specifically said -- and  
16:33:41 22 this refers back to some of the studies of Lehrer out of  
16:33:45 23 Tulane, where he has a population of asthmatics, some of  
16:33:51 24 which claim to be tobacco-smoke sensitive. Within a small  
16:33:57 25 subgroup of those individuals, he has found a response to  
16:34:04 26 exposure to environmental tobacco smoke with a diminution  
16:34:11 27 in, I want to say, FEV1 and/or FEV2, with small but  
16:34:19 28 measurable.  
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16:34:22 1 I believe he could not draw any conclusions  
16:34:25 2 as what the consequences -- health consequences of that  
16:34:29 3 would be.  
16:34:30 4 Having said that, I have said that exposure  
16:34:35 5 of some asthmatics can exacerbate or trigger an  
16:34:39 6 asthmatic -- an asthmatic response.  
16:34:45 7 And since nobody really understands the  
16:34:48 8 constitutional elements that go into asthma and why  
16:34:51 9 asthmatics respond to certain things, though we would sure  
16:34:56 10 like to know the answer to that, I think the answer to  
16:34:58 11 your question is, as present, unknown.  
16:35:03 12 BY MR. McGUIRE:  
16:35:03 13 Q Isn't it the present position of Philip  
16:35:11 14 Morris that lung cancer is not a known cause of -- excuse  
16:35:22 15 me -- exposure to ETS is not a known cause of lung cancer,  
16:35:27 16 because there are other causes that are equally as  
16:35:30 17 probable?  
16:35:31 18 MR. STONE: Objection; asked and answered,  
16:35:34 19 improperly calls for opinion testimony, vague and  
16:35:37 20 ambiguous, assumes facts not in evidence.  
16:35:39 21 You can answer.  
16:35:40 22 THE WITNESS: Yeah, I really take exception



16:35:42 23 to the way you've characterized it. The two -- the two  
16:35:48 24 elements of your question are true, but they're not  
16:35:53 25 related in the way that you've tried to relate them.  
16:35:59 26 Yes, there are other factors that have been  
16:36:02 27 identified with or associated with or believed to cause  
16:36:07 28 lung cancer. And those need to be accounted for in any  
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16:36:13 1 study. And it's not simply our position. It would be the  
16:36:15 2 position of any responsible scientist carrying out such a  
16:36:19 3 study or evaluating such a study.  
16:36:22 4 In the absence of taking those kinds of  
16:36:27 5 factors -- and they're just one dimension of factors that  
16:36:31 6 you would take into account -- it leaves you with very  
16:36:36 7 limited or no ability to draw any conclusions.  
16:36:39 8 Q How is what you just said different from what  
16:36:43 9 appears on the next page as being the new message that  
16:36:49 10 millions of people would be receptive to, regarding  
16:36:53 11 cigarette smoking?  
16:36:54 12 MR. STONE: Objection; improper use of a  
16:36:56 13 document --  
16:36:56 14 THE WITNESS: Where are we?  
16:36:57 15 MR. STONE: -- which is not admissible, to  
16:37:00 16 which there's no foundation, vague and ambiguous,  
16:37:01 17 improperly calls for opinion testimony, argumentative.  
16:37:04 18 BY MR. McGUIRE:  
16:37:04 19 Q The part that says "Cigarette smoking may not  
16:37:07 20 be the health hazard that the antismoking people say it  
16:37:09 21 is," underlined, "because other alternatives are at least  
16:37:15 22 as probable."  
16:37:15 23 MR. STONE: Same objections.  
16:37:16 24 THE WITNESS: Well, first, if we can focus on  
16:37:20 25 this, the active smoking, this is not the position that  
16:37:24 26 Philip Morris has taken with regard to active smoking.  
16:37:27 27 And to compare this document in 1972, issued  
16:37:34 28 by whoever these gentlemen -- gentlemen are, to ETS 28  
Vail, Christians & Associates (619)544-8344 387  
16:37:42 1 years later, I think the reality is, one, this is not our  
16:37:45 2 position with regard to active smoking and the example you  
16:37:49 3 gave with regard to lung cancer.  
16:37:53 4 And in terms of environmental tobacco smoke  
16:37:57 5 and adverse -- adverse effects, I just point you simply to  
16:38:04 6 some of the documents created by the International Agency  
16:38:07 7 for Research on Cancer, including Volume 38, 1986, on  
16:38:13 8 tobacco smoke where they, themselves, lay out  
16:38:17 9 constitutional issues, and much of the work that's been  
16:38:21 10 going on around the world has been looking for what are  
16:38:24 11 called genetic polymorphisms that would help explain why  
16:38:30 12 only certain people who smoke get certain kinds of  
16:38:33 13 diseases.  
16:38:33 14 So this is not a view created from whole  
16:38:37 15 cloth by Philip Morris or whoever these guys are. This is  
16:38:40 16 an important, relevant, and contemporary concept that has  
16:38:45 17 continued to be pursued by researchers, public health  
16:38:48 18 officials around the world.  
16:38:49 19 BY MR. McGUIRE:  
16:38:49 20 Q Did Philip Morris contribute to Volume 38 of  
16:38:52 21 the 1986 IARC study that you quoted in your answer?  
16:38:57 22 A Indirectly through the studies that it funded  
16:39:01 23 on the Council for Tobacco Research that were cited by the  
16:39:04 24 International Agency for Tobacco Research on cancer.  
16:39:30 25 Q Who is Burns Roper?  
16:39:33 26 A Who?  
16:39:34 27 Q Burns Roper?

16:39:35 28 A I have no idea.  
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16:39:37 1 Q The principal authors would be Burns, Roper,  
16:39:40 2 and an eminent research scientist.  
16:39:44 3 That doesn't help you identify him?  
16:39:48 4 A Burns Roper?  
16:39:48 5 Q Yeah.  
16:39:49 6 A I never heard of the name.  
16:39:51 7 Q How about Kastenbaum and Kloepper,  
16:39:54 8 K-l-o-e-p-f-e-r?  
16:39:57 9 A I see it. I don't know those names.  
16:39:59 10 Q And you don't know whether they've ever  
16:40:02 11 worked for Philip Morris before?  
16:40:04 12 A I have no idea.  
16:40:04 13 Q Do you know if they worked for any arm of  
16:40:09 14 Philip Morris, the Tobacco Control Group, the CIAR, or any  
16:40:17 15 of those groups?  
16:40:17 16 A CIAR didn't come into existence until March  
16:40:21 17 of 1988. This is May of 1972.  
16:40:24 18 Q What was --  
16:40:24 19 A These names -- these names are absolutely  
16:40:27 20 unfamiliar to me. If somebody were interested whether  
16:40:30 21 they were employees, all they'd have to do is search the  
16:40:34 22 human resources file to find out. But I've never heard  
16:40:38 23 their names in the time I was at Philip Morris.  
16:40:43 24 Q Have you discussed the Roper proposal with  
16:40:55 25 any of your predecessors in R&D at any time?  
16:41:05 26 MR. STONE: Objection; asked and answered.  
16:41:07 27 THE WITNESS: No.  
16:41:08 28 BY MR. McGUIRE:  
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16:41:08 1 Q Let's go to -- who is George Weisman?  
16:41:13 2 A A retired Philip Morris executive.  
16:41:17 3 Q And is Robert P. Roper different than Burns  
16:41:21 4 Roper?  
16:41:21 5 MR. STONE: Objection; lacks foundation.  
16:41:22 6 THE WITNESS: I have absolutely no idea.  
16:41:24 7 BY MR. McGUIRE:  
16:41:24 8 Q We do know that Robert P. Roper was  
16:41:27 9 associated with Philip Morris at some time in the late  
16:41:31 10 fifties, right?  
16:41:32 11 A I don't know.  
16:41:33 12 Q Exhibit 4030, for identification, dated  
16:41:36 13 September 22nd, 1959, is from Helmut Wakeham, and he is  
16:41:43 14 certainly a Philip Morris employee, right?  
16:41:45 15 A At that time, yes.  
16:41:45 16 Q Okay. To Robert P. Roper.  
16:41:52 17 Does that help refresh your memory, or does  
16:41:55 18 that at least indicate to you that he was, at one time, an  
16:41:59 19 employee of -- "he" being Robert P. Roper -- of Philip  
16:42:05 20 Morris?  
16:42:06 21 MR. STONE: Objection; lacks foundation, is  
16:42:07 22 compound.  
16:42:09 23 THE WITNESS: Are we trying to connect the  
16:42:12 24 Roper in 4030 with the Roper proposal in 4029?  
16:42:17 25 BY MR. McGUIRE:  
16:42:17 26 Q Well, I don't know.  
16:42:19 27 A I don't know either.  
16:42:19 28 Q We're just searching for truth here.  
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16:42:21 1 A Well, the truth is --  
16:42:22 2 MR. STONE: Mr. McGuire, let's not get on  
16:42:25 3 your high horse. You've never been on a search for truth

16:42:27 4 since this case started.

16:42:29 5 MR. McGUIRE: Is that right?

16:42:29 6 MR. STONE: You've got a search for one thing

16:42:31 7 and one thing only, and it has nothing to do with truth.

16:42:34 8 MR. McGUIRE: Well, I tell you what, I don't

16:42:37 9 appreciate this kind of trash talk.

16:42:39 10 MR. STONE: I don't appreciate you starting

16:42:40 11 it.

16:42:41 12 MR. McGUIRE: Especially if -- the search for

16:42:43 13 truth is not trash talk, sir.

16:42:44 14 MR. STONE: It is when you claim to be on a

16:42:47 15 search for truth.

16:42:47 16 MR. McGUIRE: If you'd like to put on some

16:42:49 17 boxing gloves or something like that, I'd be happy to

16:42:52 18 accommodate you.

16:42:52 19 MR. STONE: Anytime you want.

16:42:53 20 MR. McGUIRE: Well, we can do that as soon as

16:42:55 21 we adjourn here. But I'm not going to stand for any more

16:42:57 22 of your trash talk, okay.

16:42:58 23 MR. STONE: You have available to you a whole

16:43:00 24 litany of options. You can choose any one you want.

16:43:03 25 MR. McGUIRE: Uh-huh.

16:43:04 26 MR. STONE: I'm telling you when you stand on

16:43:05 27 your high horse and start preaching to this witness that

16:43:08 28 what you're after is the search for truth, that's

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16:43:10 1 inappropriate, and you know it.

16:43:11 2 MR. McGUIRE: I don't think it is.

16:43:12 3 MR. STONE: It is.

16:43:13 4 MR. McGUIRE: I'd be happy to take this

16:43:14 5 videotape down to the judge and let him determine who is

16:43:17 6 on a high horse and who isn't.

16:43:19 7 MR. STONE: You should do that.

16:43:20 8 MR. McGUIRE: Who is being disruptive and who

16:43:22 9 isn't.

16:43:22 10 MR. STONE: You can show this videotape to

16:43:24 11 the court. I'd be quite happy to have the court see how

16:43:27 12 you've spent more than the entire afternoon going back to

16:43:32 13 conduct which occurred before this witness had even joined

16:43:33 14 Philip Morris, at a time before he'd even reached the age

16:43:36 15 of majority.

16:43:37 16 MR. McGUIRE: The judge has made it clear

16:43:39 17 that historical perspectives are something that can be

16:43:40 18 done in this case, and I haven't spent a lot of time on

16:43:42 19 this.

16:43:42 20 MR. STONE: You've spent more than the entire

16:43:44 21 afternoon -- don't cut me off. You've spent more than the

16:43:45 22 entire afternoon on it, and what the judge has said is

16:43:47 23 that there may be some limited historical evidence that

16:43:50 24 has some bearing on current conduct, certainly not the

16:43:53 25 kind of inquiry you've engaged in today.

16:43:55 26 MR. McGUIRE: Well, this is discovery, and

16:43:57 27 I'm tired of talking with you and wasting more time.

16:44:00 28 MR. STONE: Then ask a question and don't

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16:44:02 1 make comments on the record.

16:44:03 2 MR. McGUIRE: Why don't you follow your own

16:44:04 3 advice.

16:44:07 4 BY MR. McGUIRE:

16:44:08 5 Q Exhibit 4030, for identification, September

16:44:11 6 22nd, 1959, is this a document that you've seen in the

16:44:14 7 past?

16:44:14 8 A No, sir.

16:44:15 9 Q Do you recognize professor -- excuse me --  
16:44:18 10 Dr. Wakeham's signature on the last page?  
16:44:22 11 A It looks different than the last one, but I  
16:44:24 12 have no reason one way or the other to doubt that this is  
16:44:27 13 not something written by Dr. -- by Dr. Wakeham. Though,  
16:44:35 14 I've never seen this before.  
16:44:36 15 Q Is -- is whether or not cigarette smoking is  
16:44:44 16 a cause for lung cancer a matter of definition, as you  
16:44:48 17 view it today?  
16:44:51 18 MR. STONE: Objection; lacks foundation,  
16:44:52 19 calls for speculation, improperly calls for opinion  
16:44:55 20 testimony.  
16:44:56 21 THE WITNESS: Could you point me specifically  
16:44:58 22 where you're reading from?  
16:44:59 23 MR. STONE: I don't think he's asking about  
16:45:00 24 the document. I think he's just asking you the question  
16:45:02 25 independent.  
16:45:03 26 THE WITNESS: So please repeat the question.  
16:45:04 27 BY MR. McGUIRE:  
16:45:04 28 Q Do you -- does Philip Morris agree that  
Vail, Christians & Associates (619)544-8344 393  
16:45:08 1 cigarette smoking is a cause of lung cancer -- or whether  
16:45:11 2 cigarette smoking is a cause of lung cancer is a matter of  
16:45:14 3 definition?  
16:45:15 4 MR. STONE: Objection; improperly -- I'm  
16:45:18 5 sorry. Assumes facts not in evidence; namely, that there  
16:45:23 6 is a position on this. It's vague and ambiguous as  
16:45:25 7 phrased. It lacks context and improperly calls for  
16:45:29 8 opinion testimony.  
16:45:30 9 You can answer, if you can.  
16:45:31 10 THE WITNESS: What I have -- I have said in  
16:45:35 11 this matter is that based on the epidemiological evidence,  
16:45:40 12 smoking can be a cause of lung cancer in some people.  
16:45:57 13 BY MR. McGUIRE:  
16:45:57 14 Q I know what you said, but do you agree that  
16:46:01 15 whether or not it's a cause is a matter of definition, how  
16:46:06 16 you define cause?  
16:46:07 17 MR. STONE: Same objections previously  
16:46:09 18 stated.  
16:46:09 19 THE WITNESS: Absolutely. And I would refer  
16:46:11 20 you, if you were interested, for more complete  
16:46:15 21 examination, to Chapter 3 of the Surgeon General's 1964  
16:46:20 22 report on causation, where they concluded it was a matter  
16:46:26 23 of judgment as well.  
16:46:27 24 BY MR. McGUIRE:  
16:46:27 25 Q Is that Philip Morris' position today?  
16:46:32 26 MR. STONE: Objection; assumes facts not in  
16:46:33 27 evidence.  
16:46:34 28 BY MR. McGUIRE:  
Vail, Christians & Associates (619)544-8344 394  
16:46:34 1 Q It's just a matter of judgment.  
16:46:36 2 MR. STONE: Objection; assumes facts not in  
16:46:37 3 evidence; namely, that there is or is not a position on  
16:46:41 4 that particular question. Vague and ambiguous, improperly  
16:46:43 5 calls for opinion testimony, outside the area in which  
16:46:45 6 this witness has been designated to testify.  
16:46:49 7 THE WITNESS: It's clearly my position. In  
16:46:52 8 the absence of having definition of terms, conversations  
16:46:56 9 become, I would say, moot, if not meaningless.  
16:47:00 10 BY MR. McGUIRE:  
16:47:00 11 Q Well, I -- is your position Philip Morris'  
16:47:08 12 position?  
16:47:08 13 MR. STONE: Same objections. Also

16:47:13 14 argumentative.

16:47:13 15 THE WITNESS: I have said in testimony, as

16:47:16 16 an expert witness for the company, what I have just told

16:47:21 17 you.

16:47:21 18 BY MR. McGUIRE:

16:47:21 19 Q That cigarette smoke is a matter of -- or

16:47:25 20 smoking cigarettes is a matter of judgment?

16:47:28 21 A No, sir. That's your characterization. What

16:47:30 22 I said was based upon the epidemiological evidence,

16:47:33 23 smoking can cause lung cancer in some people. It seems to

16:47:40 24 me rather unambiguous.

16:47:42 25 Q Does Philip Morris agree that -- let me

16:47:55 26 strike that.

16:48:16 27 If you look at No. 4 --

16:48:18 28 A Which document are we on?

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16:48:20 1 Q The same document.

16:48:21 2 A 4030?

16:48:22 3 Q Yes.

16:48:23 4 It says, "Serious consideration should be

16:48:25 5 given to nicotine as a source of smoking satisfaction and

16:48:29 6 to design" -- "and the design of a cigarette which gives

16:48:32 7 the smoker this satisfaction with low tar delivery."

16:48:35 8 Did the company actually go on and do that?

16:48:38 9 MR. STONE: Object to the question on the

16:48:40 10 grounds it improperly is based on a document for which

16:48:43 11 there is no foundation and which is otherwise

16:48:45 12 inadmissible. Vague and ambiguous.

16:48:47 13 BY MR. McGUIRE:

16:48:47 14 Q To complete the sentence, he says, "In my

16:48:49 15 opinion, such a product is vital to our cigarette

16:48:52 16 business."

16:48:52 17 So the question is, did the company go out

16:48:54 18 and develop a cigarette where the nicotine was the -- was

16:49:01 19 delivered as a source of satisfaction and tar delivery was

16:49:06 20 lowered?

16:49:07 21 MR. STONE: Objection; improperly uses a

16:49:11 22 document which is inadmissible. The question is improper

16:49:13 23 to form, lacks foundation, vague and ambiguous.

16:49:14 24 You can answer as best you can.

16:49:18 25 THE WITNESS: I'm not -- I'm not aware of any

16:49:20 26 commercial product that Philip Morris has on the market

16:49:25 27 that satisfies this, as I understand this No. 4.

16:49:32 28 MR. MILES: Could we take about a two-minute

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16:49:35 1 break. I need to make a quick phone call. I somehow had

16:49:38 2 been led to believe -- and I'm not faulting anybody, that

16:49:41 3 we'd be done and out of here by 5:00. I really need to

16:49:45 4 call somebody before they disappear. I just need two

16:49:48 5 minutes, if we may just take a break.

16:49:49 6 MR. McGUIRE: Sure.

16:49:50 7 MR. MILES: Thank you.

16:49:52 8 VIDEOGRAPHER: We are off the record. The

16:49:54 9 time is 4:50.

16:49:55 10 (Recess.)

16:55:56 11 VIDEOGRAPHER: We are back on the record.

16:55:59 12 The time is 4:56.

16:56:01 13 BY MR. McGUIRE:

16:56:01 14 Q What does it mean when cigarettes contain

16:56:06 15 equimolar amounts of nicotine?

16:56:10 16 MR. STONE: Objection; improperly calls for

16:56:13 17 opinion testimony.

16:56:15 18 THE WITNESS: Equimolar is a physical

16:56:19 19 chemical way of describing a mass of a material, and so  
16:56:26 20 equi, would mean equal. Molar is a way of calculating  
16:56:33 21 that mass that takes into consideration the molecular  
16:56:36 22 weight of the material. So you would normalize for the  
16:56:40 23 molecular weight of the -- of the material.  
16:56:43 24 BY MR. McGUIRE:  
16:56:43 25 Q Have Philip Morris cigarettes contained  
16:56:47 26 nicotine as the base, as opposed to the sitrate?  
16:56:52 27 MR. STONE: Objection; lacks foundation,  
16:56:56 28 calls for opinion testimony.  
Vail, Christians & Associates (619)544-8344 397  
16:56:58 1 THE WITNESS: Philip Morris cigarettes, as  
16:57:03 2 they are sold in the United States, contain all of the  
16:57:05 3 natural forms of nicotine that exist in tobacco, which  
16:57:08 4 would include those and others.  
16:57:13 5 BY MR. McGUIRE:  
16:57:15 6 Q So do the cigarettes contain nicotine in both  
16:57:20 7 base and sitrate?  
16:57:21 8 MR. STONE: Objection; asked and answered,  
16:57:23 9 improper as to form.  
16:57:26 10 You can answer, if you can.  
16:57:28 11 THE WITNESS: Again, those are two of the  
16:57:29 12 forms in which nicotine is naturally found in tobacco and  
16:57:33 13 in cigarettes.  
16:57:34 14 BY MR. McGUIRE:  
16:57:35 15 Q I know. Obviously, I'm addressing  
16:57:37 16 Exhibit 4034, for identification, dated December 14, 1990,  
16:57:43 17 from F.B. Gullotta, G-u-l-l-o-t-t-a, et al., to Robin  
16:57:48 18 Kinser, K-i-n-s-e-r (sic).  
16:57:51 19 (Exhibit 4034 was marked for identification.)  
16:57:51 20 BY MR. McGUIRE:  
16:57:52 21 Q Is this a document that you saw at or about  
16:57:53 22 the time that it was authored?  
16:57:56 23 A Yes. I'm copied on this document.  
16:58:02 24 Q Uh-huh.  
16:58:03 25 And the subject matter is  
16:58:04 26 electrophysiological and subjective consequences of  
16:58:08 27 tobacco filler pH modifications, a proposal.  
16:58:12 28 When the statement says cigarettes containing  
Vail, Christians & Associates (619)544-8344 398  
16:58:19 1 nicotine as a base produced greater electrophysiological  
16:58:24 2 effects than those produced by cigarettes containing  
16:58:27 3 nicotine as the sitrate, what cigarettes were they talking  
16:58:31 4 about?  
16:58:32 5 MR. STONE: Objection; lacks foundation,  
16:58:33 6 calls for speculation.  
16:58:34 7 THE WITNESS: They're talking about  
16:58:35 8 experimental cigarettes made by Philip Morris in the -- in  
16:58:39 9 the semi works to whatever specifications Dr. Gullotta had  
16:58:45 10 set out. These are experimental test cigarettes.  
16:58:48 11 BY MR. McGUIRE:  
16:58:48 12 Q And what are electrophysiological responses?  
16:58:56 13 A These are recordings taken on the scalp of  
16:59:03 14 humans, looking at electrical activity.  
16:59:08 15 Q And if there is more electrical activity,  
16:59:12 16 what does that signify, if anything?  
16:59:14 17 MR. STONE: Objection; improperly calls for  
16:59:21 18 opinion testimony.  
16:59:23 19 THE WITNESS: It's not simply more or less.  
16:59:27 20 There is a particular pattern that Dr. Gullotta, through  
16:59:31 21 the use of very sophisticated computers and programs, is  
16:59:35 22 able to look at wave patterns and look for shifts in those  
16:59:41 23 patterns which are somehow reflective of electrical

16:59:44 24 activity in the brain.  
16:59:46 25 What they mean, neither he nor I know.  
16:59:50 26 BY MR. McGUIRE:  
16:59:50 27 Q Well, what did you understand when you  
16:59:54 28 perceived this memo -- by the way, let me strike that and  
Vail, Christians & Associates (619)544-8344 399  
16:59:57 1 begin again.  
16:59:57 2 Is this on a form that you recognize as being  
17:00:01 3 Philip Morris document?  
17:00:04 4 A I have seen this. I remember getting this  
17:00:06 5 memo.  
17:00:07 6 Q All right. I'm asking you about the form  
17:00:08 7 right now so that I can use this testimony to equate to  
17:00:11 8 other forms that are very similar. So that's the reason  
17:00:16 9 for the question.  
17:00:16 10 So does it appear to be on the type of  
17:00:19 11 letterhead used in the 1990s by Philip Morris?  
17:00:23 12 A If I remove this -- these numbers and this  
17:00:28 13 marginalia, the answer is yes.  
17:00:30 14 Q How long was this type of letterhead used?  
17:00:37 15 A I can't answer that.  
17:00:39 16 Q Is it still used today?  
17:00:40 17 A I don't know.  
17:00:42 18 Q Was it used as of February 1999?  
17:00:45 19 A I don't know. It would be easy enough to  
17:00:49 20 find out, but I don't know.  
17:00:50 21 Q Okay. When you read the last sentence of the  
17:01:01 22 first paragraph that there was a method of producing  
17:01:07 23 greater electrophysiologic effects, what did that equate  
17:01:11 24 to, other than your previous answer, which was a lot of  
17:01:17 25 complicated information on a graph or a chart?  
17:01:24 26 MR. STONE: Objection; lacks foundation,  
17:01:26 27 vague and ambiguous, improperly calls for opinion  
17:01:30 28 testimony.  
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17:01:31 1 THE WITNESS: And you're specifically asking  
17:01:32 2 me what again, referring to this?  
17:01:34 3 BY MR. McGUIRE:  
17:01:34 4 Q What did greater electrophysiological effects  
17:01:38 5 equate to in terms of smoker usage?  
17:01:41 6 MR. STONE: Same objections.  
17:01:43 7 THE WITNESS: As I said before, neither I nor  
17:01:45 8 Dr. Gullotta actually knew the answers to that question.  
17:01:48 9 BY MR. McGUIRE:  
17:01:48 10 Q What was the purpose of testing for  
17:01:54 11 electrophysiological effects?  
17:01:58 12 A The intent, as I understood it, was to  
17:02:01 13 provide a more objective evaluation of the smoker's  
17:02:07 14 response, because you can see, he has both subjective and  
17:02:11 15 electrophysiological, where you ask somebody a series of  
17:02:17 16 questions about the cigarette and the smoke from -- from  
17:02:20 17 that cigarette. Does it produce a certain kind of mouth  
17:02:25 18 feel, a peppery response? Does it cause somewhat they  
17:02:31 19 refer to as throat grab? Is this something -- I don't  
17:02:35 20 have the questionnaire in front of me. But it's a series  
17:02:38 21 of questions.  
17:02:38 22 And what Frank -- Frank found out, that  
17:02:42 23 oftentimes the subjective responses were not as consistent  
17:02:48 24 as what he derived from the electrophysiological effects.  
17:02:52 25 Q How do you -- why would you want to optimize  
17:02:58 26 electrophysiological responses to cigarettes by modifying  
17:03:02 27 the filler pH?  
17:03:05 28 MR. STONE: Objection. It assumes facts not

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17:03:07 1 in evidence, improperly calls for opinion testimony.

17:03:09 2 THE WITNESS: In these -- in this

17:03:12 3 experimental type of situation, he was trying to test the

17:03:17 4 notion that indeed if you did change the proportion --

17:03:25 5 proportionality of the different forms of nicotine, that

17:03:28 6 that would have a consequence as far as how the smoker

17:03:31 7 perceived it, either as measured subjectively or as

17:03:35 8 measured electrophysiologically. And this is 1990.

17:03:41 9 BY MR. McGUIRE:

17:03:41 10 Q What would be the effect of producing more

17:03:44 11 free nicotine in the use of a cigarette?

17:03:46 12 A Well, According to Frank, he says this would

17:03:52 13 suggest that you have enhanced responses.

17:03:56 14 Q What do you interpret that to mean?

17:04:00 15 A Well, I think part of the intent here is that

17:04:03 16 you could deliver lower amounts of nicotine that as far as

17:04:09 17 the smoker were concerned could be perceived as a higher

17:04:13 18 amount of nicotine.

17:04:14 19 Q Or you could deliver the same amount of

17:04:16 20 nicotine and the smoker would perceive it as more?

17:04:19 21 A Absolutely.

17:04:21 22 Q And isn't my interpretation what Mr. Gullotta

17:04:27 23 was talking about at the time?

17:04:28 24 MR. STONE: Objection; calls for speculation,

17:04:31 25 lacks foundation.

17:05:15 26 THE WITNESS: I don't disagree with your

17:05:16 27 analysis.

17:05:16 28 BY MR. McGUIRE:

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17:05:16 1 Q Did -- did this investigation go forward?

17:05:22 2 A It went on for -- for some time and then was

17:05:29 3 dropped.

17:05:29 4 Q Was -- was there any production adjustments

17:05:38 5 made as a result of the experiments that are discussed

17:05:41 6 here?

17:05:41 7 A None of this was ever commercialized. This

17:05:48 8 was a scientific investigation by Frank and his folks on a

17:05:54 9 question that had been raised by other people.

17:05:58 10 Q Okay. Let's go to Exhibit 4035.

17:06:01 11 (Exhibit 4035 was marked for identification.)

17:06:04 12 BY MR. McGUIRE:

17:06:04 13 Q Do you recognize this document?

17:06:07 14 MR. STONE: This document apparently has been

17:06:08 15 designated highly confidential. It requires the highly

17:06:11 16 confidential provisions of the protective order to be

17:06:14 17 invoked.

17:06:15 18 Counsel, I don't know if you have a secure

17:06:17 19 room that complies with the provisions of the protective

17:06:21 20 order. I know that court reporters do not. So no copies

17:06:24 21 of this document consistent with the terms of the

17:06:27 22 protective order should be left with anyone that does not

17:06:29 23 have that secure room, if the provisions of the protective

17:06:32 24 order are to be complied with.

17:06:34 25 I don't know where this document came from or

17:06:36 26 how you obtained it. I don't believe you obtained it from

17:06:39 27 Philip Morris directly in connection with any production

17:06:42 28 because I don't believe we have produced any highly

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17:06:44 1 confidential documents in this litigation.

17:06:47 2 In any event, it appears to me that your

17:06:51 3 possession of this document is a violation of the

17:06:53 4 protective order in effect in the litigation entitled



17:06:55 5 "Philip Morris versus ABC." As such, I think either you  
17:06:58 6 or whoever provided it to you is in contempt of that  
17:07:01 7 protective order.

17:07:02 8 In any event, given the order in this case,  
17:07:05 9 your continued possession of this document would put you  
17:07:08 10 in violation of the protective order in this action.

17:07:11 11 I suggest that what you should do is return  
17:07:14 12 all copies of this document to me. I'll maintain them  
17:07:17 13 until such time that you have a facility that permits you  
17:07:19 14 to maintain highly confidential documents. I offer that  
17:07:22 15 as an accommodation. You're welcome to note for the  
17:07:26 16 record production numbers.

17:07:27 17 MR. McGUIRE: What type of facility are you  
17:07:29 18 speaking of?

17:07:30 19 MR. STONE: The facility described in the  
17:07:32 20 protective order that you read a moment ago and signed  
17:07:35 21 indicating that you read and understand it.

17:07:36 22 MR. McGUIRE: No. I didn't sign it as I read  
17:07:39 23 and understood it. I told you I didn't have time to  
17:07:42 24 understand it. I certainly read it.

17:07:43 25 MR. STONE: Mr. McGuire, I hope you're  
17:07:45 26 conscious of your obligations as both an officer of the  
17:07:48 27 court and as counsel in this case under that order.

17:07:51 28 MR. McGUIRE: You know, I'm listening to your  
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17:07:52 1 interpretation of what that order says, and without any  
17:07:56 2 guidance as to whether it applies or not. I don't think  
17:07:59 3 that this is a highly confidential document. It doesn't  
17:08:02 4 appear to be to me. It certainly is relevant. It has to  
17:08:06 5 do with this witness. It's dated in time. It impeaches  
17:08:11 6 answers that he's given under oath.

17:08:15 7 And so -- and I don't know about this  
17:08:17 8 facility. Is this someplace I'm supposed to keep it and  
17:08:20 9 then I can take it out, or is this someplace where we make  
17:08:23 10 copies of it? Maybe you can show me where it is --

17:08:27 11 MR. LENDRUM: Paragraph 11C of the protective  
17:08:30 12 order.

17:08:30 13 MR. McGUIRE: Okay. Thank you.

17:08:56 14 MR. MILES: I propose we go off camera, go  
17:09:03 15 off record.

17:09:04 16 Counsel?

17:09:04 17 MR. McGUIRE: Yes.

17:09:05 18 MR. MILES: Okay.

17:09:06 19 VIDEOGRAPHER: We are off the video record,  
17:09:08 20 and the time is 5:09.

17:09:11 21 MR. STONE: We're still on transcript?

17:09:13 22 MR. MILES: We're still on transcript  
17:09:15 23 record. We're not on camera record.

17:09:17 24 MR. McGUIRE: It says where you should  
17:09:45 25 maintain it, a locked filing cabinet and otherwise secure  
17:09:54 26 room in a designated attorney's law office, take it out  
17:10:07 27 for making copies, to allow filing with the court, parties  
17:10:33 28 shall have access, designated for use at a deposition.

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17:10:59 1 The rest of this stuff has to do with experts.

17:11:03 2 I don't see anything here that we can't  
17:11:29 3 comply with in terms of keeping a locked --

17:11:31 4 MR. STONE: Well, let me start with some of  
17:11:33 5 the problems that you're already in violation of.

17:11:35 6 Access is allowed only to designated  
17:11:37 7 attorneys. Designated attorneys are identified in  
17:11:40 8 paragraph LB. Neither you nor your firm has been included  
17:11:44 9 within the order as a designated attorney. That's point

17:11:47 10 one.  
17:11:47 11 Point two, the secure facility has to be a  
17:11:50 12 room from which the documents are not taken, except for  
17:11:53 13 purposes of making copies at another location to allow  
17:11:57 14 filing with the court or service of the document.  
17:11:58 15 MR. McGUIRE: Well, somebody on your side is  
17:12:01 16 responsible for that. I don't know where -- as far as I  
17:12:03 17 know, we got this document from you.  
17:12:06 18 MR. STONE: I do not believe you did.  
17:12:07 19 MR. McGUIRE: Well, it looks also like it was  
17:12:10 20 an exhibit to a trial, Exhibit 3, Carchman, 10/24/97.  
17:12:14 21 MR. STONE: But whether you got it from us or  
17:12:17 22 not, you got it from us under the terms of this protective  
17:12:20 23 order. And it's designated highly confidential by the  
17:12:25 24 stamp on it, in Philip Morris versus ABC. And that  
17:12:31 25 designation has the effect of designating it highly  
17:12:36 26 confidential in this case.  
17:12:37 27 The room in which it is to be maintained has  
17:12:40 28 to be one to which access is restricted, no computers,  
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17:12:43 1 dictation equipment, voice transcribers, cameras, photo  
17:12:47 2 copiers, scanners, facsimile machines, mechanical, or  
17:12:53 3 other electronic devices can be permitted in that room.  
17:12:57 4 MR. McGUIRE: I can do that. I've got a room  
17:12:59 5 like that where there's nothing in it.  
17:13:01 6 MR. STONE: In addition, copies of this  
17:13:03 7 document should not have been provided to you or your  
17:13:06 8 firm.  
17:13:06 9 MR. McGUIRE: Well, that's not my problem.  
17:13:07 10 MR. STONE: Well, it is, because I didn't  
17:13:09 11 provide them to you.  
17:13:10 12 MR. McGUIRE: I don't know that.  
17:13:11 13 MR. STONE: I haven't provided you any  
17:13:13 14 documents.  
17:13:13 15 MR. McGUIRE: How do you know that? You got  
17:13:16 16 5,000 documents you told me you gave us.  
17:13:18 17 MR. STONE: I gave them to Preston, Gates.  
17:13:19 18 MR. McGUIRE: They shipped them down to us.  
17:13:22 19 MR. STONE: That would be a violation of this  
17:13:23 20 order because you're not designated under this order to  
17:13:26 21 receive them. They know that. They signed this. You  
17:13:29 22 know that.  
17:13:30 23 MR. McGUIRE: I don't know if they signed  
17:13:31 24 this or not.  
17:13:31 25 MR. STONE: If they didn't sign it, it's an  
17:13:33 26 order in the case. They're bound by its provisions.  
17:13:36 27 MR. McGUIRE: You're not going to allow me to  
17:13:38 28 ask this gentleman questions about this meeting?  
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17:13:42 1 MR. STONE: I'm not going to stop you from  
17:13:45 2 asking questions. I'm telling you if you ask questions  
17:13:47 3 violating this order or the one in ABC, you're in  
17:13:52 4 violation and in contempt.  
17:13:54 5 MR. McGUIRE: I'm going to stop the  
17:13:55 6 deposition now, and I'm going to turn my copy of this  
17:13:58 7 Exhibit 4035 to the court reporter. I'm going to ask her  
17:14:02 8 to put it in a sealed envelope and put it in a room that  
17:14:04 9 doesn't have a copy machine in it. I'm going to ask the  
17:14:07 10 rest of you gentlemen to give me back your copies. I'm  
17:14:11 11 going to ask this gentleman to come back for a  
17:14:13 12 continuation of his deposition.  
17:14:14 13 In the court orders, this is a document we  
17:14:16 14 can discuss and that this document is no longer highly

17:14:18 15 confidential, has nothing to do with trade secrets, which  
17:14:21 16 is the subject matter of high confidentiality only, only  
17:14:25 17 trade secrets, as I read this.

17:14:27 18 MR. STONE: It is not. Mr. McGuire --  
17:14:28 19 MR. McGUIRE: Just by raising your voice, it  
17:14:31 20 doesn't change anything.

17:14:32 21 MR. STONE: It does, because all you have to  
17:14:33 22 read is what it says as highly confidential. It says on  
17:14:37 23 page 6, paragraph 10, if you care to look at it.

17:14:39 24 MR. McGUIRE: I do.

17:14:40 25 MR. STONE: It says, "'Highly Confidential'  
17:14:43 26 information concerning the following: (a) product  
17:14:45 27 formulas, specifications, recipes and manufacturing  
17:14:45 28 processes; (b) development of new products or technologies  
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17:14:49 1 currently marketed or to be marketed in the future; (c),  
17:14:52 2 marketing plans and methods; (d) business planning and  
17:14:55 3 financial documents; and (e) other information which  
17:14:57 4 constitutes 'trade secrets' (as defined in Paragraph 4)."

17:15:02 5 MR. McGUIRE: Right.

17:15:02 6 MR. STONE: It's certainly far more than what  
17:15:04 7 you said it covered.

17:15:05 8 MR. McGUIRE: Well, I don't think this  
17:15:06 9 document fits within that definition anymore. It may have  
17:15:10 10 at one time, arguably, but it certainly doesn't anymore.  
17:15:13 11 This is not a highly confidential document marked in this  
17:15:16 12 case. You have bootstrapped yourself up.

17:15:19 13 I did read this in here where it says that if  
17:15:21 14 it's marked somewhere else, then it's considered highly  
17:15:24 15 confidential in this case until we get relief from court.  
17:15:29 16 I, of course, will honor that order of the court. And so  
17:15:32 17 I am stuck between a rock and a hard spot. You've  
17:15:35 18 objected. I have to comply.

17:15:37 19 I would like everybody to return their  
17:15:39 20 documents. I will give them to the court reporter. Say  
17:15:41 21 goodbye to the witness. And see you all next time we can  
17:15:46 22 bring this up in court. And if we have to talk with him  
17:15:49 23 further about this, maybe we can talk with him from the  
17:15:52 24 standpoint that we discussed, perhaps not having him come  
17:15:55 25 out here but to appear for a video deposition.

17:15:58 26 I also will make a record right now as long  
17:16:00 27 as we're making records that I did not have an opportunity  
17:16:03 28 to review the documents, with sufficiency to ask him  
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17:16:09 1 questions, that you handed me yesterday afternoon. I'm  
17:16:11 2 not prepared to ask him questions about that now. I don't  
17:16:13 3 know whether I have to ask him questions or not anyway.

17:16:16 4 But if I do, I would make the motion with the  
17:16:19 5 court, which I'll combine with this one, that I ask him  
17:16:22 6 questions at that time.

17:16:23 7 I also will be asking for other documents  
17:16:25 8 that he mentioned in his testimony, and we may have to  
17:16:29 9 talk with him about that.

17:16:30 10 There's nothing -- I know you're not going to  
17:16:33 11 agree to anything. We're not making a record here other  
17:16:35 12 than me telling you what I intend to do. So having said  
17:16:38 13 that --

17:16:39 14 MR. STONE: Let me tell you what I intend to  
17:16:41 15 do.

17:16:41 16 One, the reporter is not authorized to  
17:16:43 17 maintain these highly confidential documents. I ask that  
17:16:46 18 you give them to me. I'll maintain them subject to any  
17:16:49 19 rulings by the court.

17:16:50 20 Secondly, what I'd like to do now is my  
 17:16:52 21 examination of the witness since it seems quite likely  
 17:16:55 22 this witness's examination by you has now been concluded.  
 17:16:59 23 I'd like to ask my questions at this time. So we can go  
 17:17:01 24 back on camera. I'll switch to the other side of the  
 17:17:03 25 table, and I'll do my examination at this time.  
 17:17:05 26 MR. McGUIRE: How much time do you think  
 17:17:07 27 you'll have?  
 17:17:08 28 MR. STONE: I don't know. Probably less than  
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 17:17:10 1 an hour.  
 17:17:10 2 (Confidential proceedings end.)  
 17:18:21 3 (Discussion off the record.)  
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 17:18:23 1 VIDEOGRAPHER: We are back on the record.  
 17:18:25 2 The time is 5:18.  
 17:18:26 3 MR. STONE: Thank you.  
 17:18:28 4  
 17:18:28 5 EXAMINATION  
 17:18:28 6 BY MR. STONE:  
 17:18:28 7 Q Dr. Carchman, would you please describe for  
 17:18:30 8 the court your educational background.  
 17:18:32 9 A My undergraduate background was a major in  
 17:18:40 10 biology and chemistry with a minor in philosophy. I spent  
 17:18:46 11 four years from 1964 to 1968 at the Institute for Cancer  
 17:18:51 12 Research at Columbia University and authored and  
 17:18:58 13 coauthored a number of -- a number of studies.  
 17:19:00 14 In 1968, I left Columbia and went to Down  
 17:19:06 15 State Medical Center, part of the State University of  
 17:19:09 16 New York, in the department of pharmacology, and I  
 17:19:13 17 obtained my doctorate degree.  
 17:19:15 18 Following that, I went to the National Cancer  
 17:19:18 19 Institute at the National Institutes of Health, and spent  
 17:19:22 20 several years in the laboratory of molecular biology, in  
 17:19:26 21 which I published or coauthored or authored a number of  
 17:19:31 22 papers, chapters in books, and presented work at various  
 17:19:36 23 national and international meetings around the world.  
 17:19:38 24 In 1974, I took a faculty appointment at the

17:19:43 25 Medical College of Virginia. At the time, that was in the  
17:19:46 26 department of pharmacology. I rose through the ranks from  
17:19:51 27 assistant professor to associate professor to full  
17:19:54 28 professor. The department changed its name to  
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17:19:58 1 pharmacology and toxicology. I had a joint appointment,  
17:20:02 2 and I still do, as well as in pharmacology and toxicology  
17:20:06 3 in the department of biostatistics.  
17:20:08 4 I was also the associate scientific director  
17:20:11 5 for the Massey Cancer Center, which was a national cancer  
17:20:15 6 institute, comprehensive -- comprehensive cancer center.  
17:20:21 7 I have trained in excess of 50 students,  
17:20:25 8 M.D.s, and Ph.D.s, in the areas of -- in the medical  
17:20:31 9 disciplines of surgical and medical oncology, pulmonology,  
17:20:38 10 and immunology.  
17:20:39 11 I have trained students from a variety of  
17:20:42 12 different -- different countries. I have served on  
17:20:45 13 university -- university committees. I have been an  
17:20:49 14 expert consultant for the U.S. Environmental Protection  
17:20:53 15 Agency and helped write some of the priority health  
17:20:58 16 effects documents as a result of the Clean Water Act.  
17:21:02 17 I did work for the National Academy of  
17:21:05 18 Sciences. I was involved with the Centers for Disease  
17:21:09 19 Control and prevention on a project. I was involved with  
17:21:15 20 the U.S. Forestry Service in reviewing toxicology and  
17:21:20 21 epidemiology of pesticides.  
17:21:23 22 And I was awarded research grants and  
17:21:31 23 contracts from various institutes within the National  
17:21:36 24 Institutes of Health from EPA and from the Department of  
17:21:40 25 Defense as well as running the training program for the  
17:21:44 26 American Cancer Society, the institutional grant at the  
17:21:49 27 university.  
17:21:50 28 And I was involved in a number of NEIHS,  
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17:21:55 1 National Institute of Environmental Health Science,  
17:21:59 2 training grants. And I received an accommodation from the  
17:22:03 3 U.S. EPA for my work that I did with them, and I received  
17:22:08 4 a special research career development award from the  
17:22:13 5 National Institutes of Health for some of the research  
17:22:14 6 that I was doing.  
17:22:16 7 And I established the first AIDS P3 research  
17:22:21 8 facility at the medical school and obtained the first HIV  
17:22:26 9 grant.  
17:22:26 10 And I put together and hosted a variety of  
17:22:30 11 national and international meetings, including those  
17:22:34 12 involving the assistant surgeon general of the United  
17:22:37 13 States, Dr. Vernon Houck, as well as doing work for the  
17:22:44 14 Department of Defense on chemical safety protection for  
17:22:49 15 troops and civilians.  
17:22:51 16 And two weeks ago, I was invited to  
17:22:58 17 participate in a Mathematical Association of America  
17:23:02 18 conference on the role of mathematics in the health  
17:23:06 19 sciences, making recommendations as to what kind of  
17:23:11 20 mathematics and statistics health scientists need to have,  
17:23:15 21 as we move forward into the 21st -- 21st Century.  
17:23:20 22 Q Thank you.  
17:23:21 23 I think one thing you may not have mentioned  
17:23:24 24 was the school from which you got your undergraduate  
17:23:29 25 degree.  
17:23:29 26 A I received my undergraduate degree at Long  
17:23:31 27 Island University in Brooklyn, New York.  
17:23:33 28 Q Thank you very much.  
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17:23:35 1 About how many publications have you authored  
17:23:37 2 or coauthored during your professional career?  
17:23:41 3 A I have something less than 90 peer-reviewed  
17:23:44 4 publications and 13 chapters in books and approximately a  
17:23:49 5 hundred scientific abstract presentations.  
17:23:54 6 Q Have you, in the course of your years in the  
17:23:58 7 various aspects of the field of science that you have been  
17:24:01 8 in, become familiar with what you consider to be  
17:24:03 9 scientific principles?  
17:24:05 10 A Yes.  
17:24:05 11 Q Can you describe briefly scientific  
17:24:08 12 principles as they apply to research.  
17:24:11 13 A Scientific principles exist at -- at least --  
17:24:15 14 at least two levels. And they're based on the premise of  
17:24:20 15 academic freedom. That is, the right to pursue  
17:24:25 16 scientific -- scientific questions, wherever they might --  
17:24:29 17 wherever they might take you, as long as you don't  
17:24:32 18 compromise your fundamental values both as a scientist  
17:24:37 19 and -- and as a -- and as a person.  
17:24:42 20 And having been at the university for  
17:24:45 21 approximately 15 years and having been involved in peer  
17:24:50 22 review of articles and review of research proposals, both  
17:24:56 23 from government and nongovernmental sources, it's  
17:25:00 24 important to maintain a degree of confidentiality about  
17:25:05 25 the things that you're reviewing, because they represent  
17:25:09 26 the effort and life's blood of other -- other individuals.  
17:25:13 27 And so when one is asked to maintain the  
17:25:16 28 confidentiality of something, especially something that is  
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17:25:21 1 not originated with you, you have a responsibility to do  
17:25:27 2 so. But you also have a responsibility to completely  
17:25:31 3 report all of the information you have, and if what you've  
17:25:36 4 reported has changed in any way, maybe different, you have  
17:25:41 5 a responsibility to report that generally in the journal  
17:25:47 6 in which you published it in. That's the normal, typical,  
17:25:51 7 scientific response for events such as -- such as that.  
17:25:57 8 And you also have a right to criticize and  
17:26:02 9 dispute and question other people's work based on the --  
17:26:06 10 on the science and not on any sort of political persuasion  
17:26:11 11 or some other aspect that's strictly an objective  
17:26:17 12 scientific platform that one should try to exchange ideas  
17:26:20 13 and information on. And one should not try to surround  
17:26:24 14 one's self with individuals who are all of the like  
17:26:33 15 position. Diversity is probably one of the most important  
17:26:37 16 things in terms of scientific growth. And that's a key  
17:26:39 17 principle, I believe, that is imbued in some of the best  
17:26:44 18 scientists I've run into around the world.  
17:26:47 19 Q Did you, before the time you joined Philip  
17:26:51 20 Morris, conduct your career as best you could in  
17:26:53 21 accordance with the scientific principles you described?  
17:26:56 22 A Yes.  
17:26:56 23 MR. McGUIRE: Objection; move to strike,  
17:26:59 24 leading.  
17:26:59 25 BY MR. STONE:  
17:26:59 26 Q After you joined Philip Morris, did you  
17:27:01 27 conduct your career in accordance with those principles?  
17:27:05 28 MR. McGUIRE: Same objection.  
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17:27:06 1 THE WITNESS: Yes.  
17:27:06 2 BY MR. STONE:  
17:27:06 3 Q At any time that you've been at Philip  
17:27:10 4 Morris, were you aware of other scientists at Philip  
17:27:13 5 Morris who conducted their professional lives other than

17:27:16 6 in accordance with the principles you've described?  
17:27:18 7 MR. McGUIRE: Leading and self-serving.  
17:27:21 8 THE WITNESS: No.  
17:27:21 9 BY MR. STONE:  
17:27:21 10 Q Let me ask you about have you served as a  
17:27:27 11 peer reviewer for journals?  
17:27:28 12 A Yes.  
17:27:29 13 Q In the course of a peer reviewer, is it made  
17:27:32 14 known to you when you review the paper if there was  
17:27:34 15 funding provided by one group or another?  
17:27:37 16 MR. McGUIRE: Vague as to time.  
17:27:39 17 THE WITNESS: Usually, there is an  
17:27:42 18 attribution on each paper, usually. I would say 90  
17:27:47 19 percent of the papers provide an attribution as to the  
17:27:51 20 source of funding.  
17:27:51 21 BY MR. STONE:  
17:27:51 22 Q And over what period of time did you serve as  
17:27:54 23 a peer reviewer for journals?  
17:27:56 24 A From approximately 1968 until a few years ago.  
17:27:59 25 Q And was your testimony about seeing  
17:28:02 26 attribution roughly about 90 percent of the time  
17:28:06 27 consistent throughout that period?  
17:28:07 28 A Yes.  
Vail, Christians & Associates (619)544-8344 417  
17:28:08 1 Q Did you, as a reviewer, ever recommend that a  
17:28:10 2 paper not be accepted for publication because of the  
17:28:15 3 sources of any funding disclosed in the attribution?  
17:28:18 4 A Absolutely not.  
17:28:19 5 Q Are you aware of any journals that today do  
17:28:23 6 employ some standard of acceptance for publication based  
17:28:26 7 on attribution?  
17:28:27 8 A Yes.  
17:28:27 9 Q What journals are those?  
17:28:30 10 A One of the most prominent ones is -- are the  
17:28:35 11 journals from the American Thoracic Society which has  
17:28:39 12 publicly stated their position about not accepting any  
17:28:42 13 papers that have received partial or any support from any  
17:28:47 14 tobacco source.  
17:28:49 15 Q Are there any other organizations that you  
17:28:51 16 are aware of that have, at any time, said they would  
17:28:55 17 refuse to accept papers or input or scientific commentary  
17:29:01 18 from groups that are either funded by or associated with  
17:29:05 19 Philip Morris?  
17:29:06 20 A For example, when Mr. McGuire asked me about  
17:29:11 21 the WHO Geneva meeting and whether we had provided input,  
17:29:18 22 my answer was, no, because we were told that our input  
17:29:21 23 wasn't -- wasn't needed.  
17:29:24 24 But having said that, Dr. Solana has been in  
17:29:28 25 rather frequent contact with Dr. Yalk, whose name is  
17:29:31 26 listed in that document and is one of the principals for  
17:29:35 27 WHO in trying to find a way that we can have input into  
17:29:39 28 some of the work that they're doing.  
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17:29:42 1 Q You were -- you mentioned yesterday, I think,  
17:29:47 2 something called good laboratory practices or GLP.  
17:29:51 3 Do you recall that?  
17:29:51 4 A Yes.  
17:29:51 5 Q Can you explain briefly to us what that is.  
17:29:54 6 MR. McGUIRE: Cumulative. He already  
17:29:57 7 explained it.  
17:29:58 8 THE WITNESS: Good laboratory practices  
17:30:00 9 represents what -- what is today almost the standard for  
17:30:07 10 doing work that -- scientific work that might find itself

17:30:12 11 used by some government and/or regulatory body. Those are  
17:30:16 12 the fundamental standards.

17:30:19 13 So, basically, it's an assurance of quality,  
17:30:23 14 of maintaining maintenance of the data and the biological  
17:30:28 15 materials, and documentation of all changes and  
17:30:32 16 modifications that deviate from -- from the protocols that  
17:30:36 17 have -- that have been established.

17:30:40 18 And it's -- and it requires regular  
17:30:44 19 assessment by the outside -- outside bodies that certify  
17:30:48 20 laboratories for this.

17:30:51 21 BY MR. STONE:

17:30:51 22 Q What outside bodies certify laboratories for  
17:30:56 23 GLP in the United States?

17:30:58 24 A U.S. Food and Drug Administration.

17:31:00 25 Q Who establishes if there's some group or body  
17:31:03 26 that establishes what GLP will be?

17:31:06 27 A There is an international organization. The  
17:31:09 28 acronym is OECD, Office of European Community Development,  
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17:31:17 1 and it has established guidelines and procedures that have  
17:31:21 2 been adopted by other -- other places, including the U.S.  
17:31:26 3 FDA. And there's a very large catalog of these that may  
17:31:32 4 or may not be available on the Internet. But they're  
17:31:35 5 clearly -- they're clearly available to anybody that's  
17:31:37 6 interested.

17:31:37 7 And so research entities, drug companies,  
17:31:42 8 chemical companies, laboratories that are involved in  
17:31:49 9 important pieces of work, some universities that are  
17:31:54 10 doing -- doing work are required to meet those -- meet  
17:31:58 11 those standards.

17:31:59 12 Q Yesterday, you mentioned certain limitations  
17:32:16 13 or qualifications on the use of animal models, including  
17:32:19 14 weight gain depression.

17:32:21 15 Do you recall that testimony?

17:32:23 16 A Yes.

17:32:23 17 Q Is there a group or groups that set some type  
17:32:26 18 of a standard for doing animal experimentations?

17:32:31 19 A There are several groups, both governmental  
17:32:34 20 and nongovernmental. But even the nongovernmental are  
17:32:36 21 really doing this with -- with the government. So whether  
17:32:39 22 it's the National Institute of Environmental Health  
17:32:43 23 Sciences and underneath them the National Toxicology  
17:32:46 24 Program which is actually a consortium of government  
17:32:49 25 agencies, including the National Institute of  
17:32:54 26 Environmental Health Sciences, the EPA, FPA, the National  
17:32:59 27 Health Institute are all part of this NTP. The chairman  
17:33:03 28 of the NTP is Dr. Holdman, who is the president.  
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17:33:07 1 And it's the NTP that carries out the vast  
17:33:09 2 majority of animal carcinogenicity testing, amongst other  
17:33:14 3 things. And they sort of adopted that from the National  
17:33:16 4 Cancer Institute which then turned it over to the NTP.  
17:33:21 5 And there are rules and criteria that are not only  
17:33:24 6 accepted by them. But there are standard rules of  
17:33:27 7 practice by toxicologists and pharmacologists in terms of  
17:33:34 8 the criteria that are used in evaluating or setting up and  
17:33:39 9 designing and then evaluating animal studies.

17:33:42 10 And I think as I said or I tried to say,  
17:33:45 11 things like body weight gain depression are one of the  
17:33:49 12 classical -- this is nothing new -- overt toxicity end  
17:33:54 13 points. And the standard cutoff is body weight gain  
17:33:59 14 depression equal to or greater than 10 percent as  
17:34:02 15 representing a serious level of concern which compromises



17:34:05 16 the validity of any conclusions one might draw from the  
17:34:08 17 study. It doesn't invalidate it. It just further puts  
17:34:11 18 some limitations on it, significant limitations.

17:34:15 19 Q If a researcher wanted to obtain a copy of  
17:34:19 20 these guidelines, where would they go to find them?

17:34:21 21 MR. McGUIRE: Objection; hypothetical  
17:34:25 22 question, no foundation, not here as an expert witness.

17:34:29 23 THE WITNESS: You can basically search the  
17:34:31 24 literature. There have been position papers written in  
17:34:35 25 Environmental Health Perspectives, which is a journal of  
17:34:39 26 the National Institutes of Environmental Health Sciences.  
17:34:44 27 ILSI, the International Life Sciences Institute, which is  
17:34:48 28 a private organization that does a lot of work for the  
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17:34:51 1 government also has some published -- some published  
17:34:55 2 standards.

17:34:55 3 And I believe you would find information  
17:35:00 4 within parts of the OECD testing guidelines.

17:35:03 5 BY MR. STONE:

17:35:03 6 Q Does NTP publish the guidelines directly?  
17:35:05 7 A Not that I'm aware of.

17:35:06 8 Q Does IARC publish any guidelines?  
17:35:11 9 A IARC has published over the years in a  
17:35:14 10 number of its books, criteria in terms of the importance  
17:35:18 11 it puts on certain kinds of -- certain kinds of studies as  
17:35:22 12 they might be used as evidence to draw any or make any  
17:35:26 13 causal inferences.

17:35:28 14 Q Are you familiar with the concept of a  
17:35:30 15 spontaneous rate of tumor genicity or tumor generation?

17:35:36 16 A Yes.

17:35:36 17 Q Is that something that there's published data  
17:35:39 18 on that for various strains of experimental animals?

17:35:42 19 A Yes.

17:35:42 20 Q Do you know what the spontaneous rate of  
17:35:44 21 tumor genicity is for the Wistar rat that you talked about  
17:35:48 22 earlier in your testimony?

17:35:49 23 A Yes. It's --

17:35:50 24 Q What is it?  
17:35:50 25 A Zero to 3 percent.

17:35:52 26 Q Do you know what the spontaneous rate of  
17:35:56 27 tumor genicity is for the A/J mouse?  
17:35:59 28 A Almost 100 percent.  
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17:36:00 1 Q Is the spontaneous rate of tumor genicity a  
17:36:04 2 factor that any of the organizations you've just mentioned  
17:36:07 3 take into account in evaluating experimental results?

17:36:10 4 A Yes.

17:36:11 5 Q How do they do that?  
17:36:13 6 A IARC, in comparison of results obtained from  
17:36:17 7 such models, basically weighs the spontaneous studies much  
17:36:25 8 lower than those in which the spontaneous rate is small.

17:36:29 9 Q I'm sorry.  
17:36:30 10 When you say it weighs the spontaneous rate  
17:36:33 11 much lower.

17:36:34 12 A It doesn't give it much weight.

17:36:35 13 Q So if the spontaneous rate is higher, the  
17:36:39 14 study is given lower weight?

17:36:43 15 A Yes.

17:36:43 16 Q You were asked yesterday, I think, and maybe  
17:36:51 17 again today, about certain risk association numbers. We  
17:36:57 18 talked about numbers of greater than 5, less than 5, less  
17:37:00 19 than 2.  
17:37:01 20 Do you recall that?

17:37:01 21 A Yes.

17:37:02 22 Q What does a number -- what do those numbers

17:37:06 23 represent, the number 2 or 5, in the way in which you

17:37:10 24 answered Mr. McGuire's questions over the last couple of

17:37:13 25 days?

17:37:13 26 A They represent a ratio or another way of

17:37:17 27 expressing it as some multiple over a normalized value.

17:37:22 28 So when you compare one group to another, it's not -- it's

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17:37:26 1 not as if the control group doesn't have any of that --

17:37:29 2 any of that disease. That's normalized to 1. So you're

17:37:32 3 looking for the difference between what you see in the

17:37:36 4 unexposed group versus what you see in the exposed group.

17:37:41 5 It's just the ratio of that minus whatever the random

17:37:44 6 background effects might be.

17:37:45 7 Q And yesterday, you described certain numbers

17:37:48 8 as having -- as being strong or weak.

17:37:51 9 Do you recall that?

17:37:52 10 A Yes.

17:37:52 11 Q And strong was greater than 5?

17:37:54 12 A 5 or greater.

17:37:55 13 Q And weak was less than 5?

17:37:57 14 A Yes.

17:37:57 15 Q And then how did you describe a number less

17:38:00 16 than 2?

17:38:01 17 A Marginal.

17:38:02 18 Q What did you mean when you said "marginal"?

17:38:04 19 A That it is oftentimes difficult to separate

17:38:08 20 that from no effect.

17:38:10 21 Q In thinking about that question, one of the

17:38:13 22 sets of numbers I think Mr. McGuire showed you today had

17:38:17 23 something referred to as a 95-percent confidence interval

17:38:20 24 associated with it.

17:38:21 25 A Yes.

17:38:21 26 Q What's a 95-percent confidence interval?

17:38:24 27 A As those values are used, it represents the

17:38:31 28 range of values within -- found within that experiment.

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17:38:35 1 So if you have a point estimate, let's say, of 1.16 but a

17:38:42 2 confidence interval that's .93 ranging to 1.44, that

17:38:47 3 basically says that the real value is somewhere between

17:38:52 4 .93 and 1.44.

17:38:55 5 The fact that it overlaps 1 at the 95-percent

17:39:01 6 confidence interval means that, statistically, you can't

17:39:04 7 tell whether it's different than one or not.

17:39:06 8 Q Some of the numbers Mr. McGuire showed you,

17:39:11 9 they -- they overlapped one. They ranged from below 1 to

17:39:14 10 above 1, but they were only maybe a little bit below 1 and

17:39:18 11 maybe a bit more above 1. For example, they might have

17:39:22 12 ranged from .93 to .14, for example.

17:39:26 13 When you have a range like that that has

17:39:29 14 shifted a bit more above 1 or below 1, is there any

17:39:33 15 significance to that?

17:39:35 16 A I think there are two levels of interest

17:39:37 17 here. One, the author has done that statistical analysis

17:39:41 18 themselves to ask themselves that question, whether there

17:39:45 19 is statistical significance. So if they do that kind of

17:39:49 20 procedure, they can't basically ignore -- ignore that it

17:39:55 21 is or isn't statistically significant. So they've carried

17:39:59 22 out this procedure. And if the confidence interval

17:40:03 23 overlaps with 1, it's not statistically significant.

17:40:06 24 That doesn't mean you should throw away --

17:40:09 25 throw away that information. I'm not -- I'm not saying

17:40:12 26 that.  
17:40:12 27 Now, when you do those kinds of tests, you're  
17:40:15 28 basically asking yourself is this a chance event. And the  
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17:40:22 1 statistical significance test is one of the things you use  
17:40:25 2 to try to eliminate chance.  
17:40:27 3 If it overlaps with 1, you can't eliminate  
17:40:32 4 chance, for example.  
17:40:33 5 Q So when you say "you can't eliminate chance,"  
17:40:36 6 you mean the results observed in the experiments could be  
17:40:39 7 accounted for simply by chance or random distribution?  
17:40:43 8 A Yes.  
17:40:44 9 Q Mr. McGuire asked you yesterday, as I recall,  
17:40:48 10 three questions about your views as to whether ETS is a  
17:40:53 11 cause or a substantial factor or a factor in the cause of  
17:40:59 12 cardiovascular disease, lung cancer, and respiratory  
17:41:02 13 illness.  
17:41:03 14 Do you recall those three questions?  
17:41:04 15 A Yes.  
17:41:04 16 Q And then he asked you as to one of them why  
17:41:07 17 your view was that it was not a cause.  
17:41:09 18 Do you recall giving that explanation?  
17:41:10 19 A Yes.  
17:41:11 20 Q Was that as to cardiovascular?  
17:41:13 21 A Yes.  
17:41:13 22 Q Were you asked yesterday by Mr. McGuire to  
17:41:17 23 give your explanation as to why you are of the opinion  
17:41:21 24 that ETS has not been shown or does not cause lung  
17:41:25 25 cancer? Were you asked by that --  
17:41:28 26 A Yes.  
17:41:28 27 Q -- the question by him?  
17:41:29 28 A Yes.  
Vail, Christians & Associates (619)544-8344 426  
17:41:29 1 Q Did you give that explanation yesterday?  
17:41:31 2 A Yes.  
17:41:31 3 Q What's your explanation as to respiratory  
17:41:36 4 illness and whether or not ETS causes that?  
17:41:39 5 MR. MCGUIRE: Cumulative.  
17:41:41 6 MR. STONE: I don't believe this or the lung  
17:41:43 7 cancer was asked. The witness's recollection may be  
17:41:46 8 correct. I thought we were asked only cardiovascular, but  
17:41:49 9 I'll just ask the respiratory illness one for now.  
17:41:52 10 THE WITNESS: As I -- as I said earlier in  
17:41:55 11 response to one of Mr. McGuire's questions, I felt that  
17:41:58 12 exposure to ETS in certain sensitive populations could  
17:42:02 13 trigger or exacerbate an asthmatic response.  
17:42:05 14 Asthma, as one of its components, has a lung  
17:42:12 15 or pulmonary component. So in that respect, I believe  
17:42:15 16 that exposure to ETS in some certain population of  
17:42:19 17 individuals would satisfy -- would satisfy that.  
17:42:22 18 BY MR. STONE:  
17:42:22 19 Q And if we set aside the asthma that you've  
17:42:25 20 described already and the irritation that you described on  
17:42:30 21 the first day of your deposition, are there other  
17:42:32 22 respiratory illnesses as to which you've addressed your  
17:42:35 23 opinion as to whether or not ETS causes those illnesses?  
17:42:38 24 A I have, and my opinion is the data is not  
17:42:43 25 convincing with regard to environmental tobacco smoke.  
17:42:46 26 Q You were asked by Mr. McGuire if you had any  
17:42:50 27 criticisms or questions about work that Dr. Witschi has  
17:42:54 28 done.  
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17:42:55 1 Do you recall that?

17:42:55 2 A Yes.

17:42:55 3 Q What are the criticisms or questions you have

17:42:58 4 of Dr. Witschi's work that you are -- can recall right now?

17:43:01 5 A Well, the questions that I had which I

17:43:04 6 actually directed at Dr. Witschi over a day's -- a day's

17:43:09 7 meeting, had to do with the body weight gain depression,

17:43:14 8 which was really quite significant. The -- what was going

17:43:20 9 on in the recovery phase, which was the time he saw these

17:43:24 10 effects, and the specificity of that effect in terms of

17:43:29 11 has he looked at other things that would depress body

17:43:33 12 weight gain the way his smoke -- tobacco smoke exposure

17:43:37 13 did. And then see what happens in the -- in the mouse.

17:43:40 14 He basically said it's an interesting idea,

17:43:45 15 he hadn't -- he hadn't done it. I believe either I or

17:43:48 16 somebody else that was there asked him if he had done the

17:43:52 17 particulate smoke exposure alone, in the absence of gas

17:43:58 18 phase, as other people have done with diesel engine

17:44:03 19 exhaust. And unlike Dr. Witschi's study, the diesel

17:44:07 20 engine exhaust, the carcinogenicity associated with diesel

17:44:11 21 engine exhaust is totally particle related and there's no

17:44:14 22 carcinogenic activity in the gas phase.

17:44:16 23 And the gas phase from diesel exhaust is

17:44:20 24 qualitatively and quantitatively the same as that for

17:44:23 25 tobacco smoke. So it would be interesting to try diesel

17:44:27 26 engine exhaust in the A/J mouse model, both particle and

17:44:31 27 gas phase, to figure out what was going -- what was going

17:44:35 28 on.

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17:44:35 1 And, basically, the questions that we

17:44:43 2 discussed resulted in INBIFO carrying out an experiment on

17:44:48 3 the A/J mouse to try to understand what was going on with

17:44:53 4 regard to that model and the way Dr. Witschi performed it.

17:44:57 5 I had no doubt and I think I expressed to him

17:45:00 6 that if somebody were to repeat that work, they would get

17:45:04 7 the same outcome. My problem was I just didn't understand

17:45:09 8 what it meant. And he said to me his real interest was

17:45:16 9 not on tobacco carcinogenicity but on chemoprevention.

17:45:20 10 And so he said -- you know, the big carrot study that the

17:45:25 11 NCI sponsored with smokers where they gave them beta

17:45:28 12 keratin and then the smokers had an increase risk for lung

17:45:32 13 cancer, not what they predicted.

17:45:34 14 He said to me if they would have come to me,

17:45:36 15 I would have run it in my system and that's exactly what I

17:45:40 16 would have shown.

17:45:41 17 Well, it turns out he's done that, and that's

17:45:43 18 not what he's shown.

17:45:44 19 Then he's also looked at some

17:45:47 20 chemopreventative agents that Dr. Hesh at the University

17:45:51 21 of Minnesota has been found to be valuable. And they

17:45:55 22 don't work in his A/J mouse model.

17:45:57 23 So the point is we'd love to have a model to

17:46:01 24 use. His model works in terms of producing lung tumors

17:46:05 25 when exposed to tobacco smoke.

17:46:06 26 There are a lot of controls that need to be

17:46:09 27 done.

17:46:10 28 And then finally I said to him, as I said to

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17:46:12 1 the NTP, if Dr. Witschi's work is correct with this gas

17:46:17 2 phase, it will turn on its head the last 50 years of

17:46:21 3 tobacco carcinogenicity that have been done and published

17:46:24 4 through the U.S. Surgeon General's reports and other

17:46:28 5 reports around the world.

17:46:29 6 If it's correct, it is probably one of the

17:46:32 7 most significant observations made in a long time. It  
17:46:37 8 will dramatically change the way we develop products. But  
17:46:41 9 there are some unanswered questions that are not trivial  
17:46:44 10 that need to be addressed, and we're trying to address  
17:46:48 11 it. Not to undermine Dr. Witschi's work, but to try to  
17:46:54 12 understand it and see if we can -- we can use it and  
17:46:56 13 embrace it.

17:46:57 14 Q Why do you say his work, if it's correct,  
17:46:59 15 would turn 50 years of science in this area on its head?

17:47:03 16 A From 1964 to today, the public health  
17:47:10 17 community, as evidenced by the Surgeon General, the  
17:47:12 18 Committee on Tobacco and Health in the UK, whatever public  
17:47:16 19 health body has published on this, has been saying it's  
17:47:19 20 the tar, which was a driving force for tar reduction over  
17:47:25 21 the last 40 or 50 years.

17:47:26 22 And a lot of that was driven both by the  
17:47:30 23 epidemiology and by the work done in mouse skin painting  
17:47:35 24 and by the tobacco working group studies that were done at  
17:47:38 25 the National Cancer Institute over a ten-year -- ten-year  
17:47:42 26 period. And though people realized there were components  
17:47:45 27 of the gas phase that were important, what Dr. Witschi has  
17:47:50 28 shown, it is the gas phase that's critical. And in one of  
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17:47:53 1 his papers, he basically said that NNK and benzopyrene are  
17:48:00 2 not relevant in his model.

17:48:03 3 Those are two elements that we, as well  
17:48:06 4 other members of the public health community and other  
17:48:08 5 industry members, have been moving on to eliminate or to  
17:48:12 6 reduce. And if those are things we shouldn't put our  
17:48:17 7 emphasis on, we need to know that.

17:48:20 8 Q What phase are they in, the ones you've just  
17:48:22 9 mentioned?

17:48:23 10 A What? Oh. They're in the particulate phase.

17:48:26 11 Q Okay. Has Dr. Witschi, in either  
17:48:29 12 conversations with you or papers you've read, expressed a  
17:48:32 13 view as to the effect of the particulate phase of tobacco  
17:48:35 14 smoke in explaining the tumors that he observes in his A/J  
17:48:41 15 mice?

17:48:41 16 A He experimentally has eliminated it. It was  
17:48:43 17 a very straightforward, elegant study, analogous to what  
17:48:49 18 people had done in diesel engine exhaust. And his  
17:48:53 19 results, I think, were remarkable and maybe even  
17:48:56 20 surprising to him. But I believe the results. I just  
17:49:01 21 don't understand them. And I'm not exactly sure that  
17:49:04 22 Dr. Witschi does at this time too. And that's not meant  
17:49:07 23 as a criticism.

17:49:08 24 Q What is -- let me see if I can ask it this  
17:49:13 25 way: Do the effects that one observes in animals always  
17:49:16 26 translate into humans?

17:49:18 27 A Absolutely not.

17:49:19 28 Q How do you make a judgment as to whether  
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17:49:22 1 animal testing results should be extended to apply to  
17:49:27 2 humans or not?

17:49:28 3 A I'll give you a quick -- a quick example.  
17:49:33 4 d-limonene is a substance that's found in oranges, and  
17:49:36 5 it's used in cosmetics. It impacts a floral, orangy kind  
17:49:47 6 of aroma.

17:49:48 7 If you give it to animals, in male rats, you  
17:49:51 8 get cancer of the kidney. Not in female rats, not in male  
17:49:55 9 mice, not in female mice. It is an animal carcinogen.  
17:49:59 10 It's dose related, reproducible. It's real. The question  
17:50:03 11 is is a human being like the male rat or is it like the

17:50:06 12 mouse or the female rat.

17:50:08 13 And so they worked out the mechanism of

17:50:10 14 action, and the significance is it binds to alpha two

17:50:13 15 microglobulin. It's a protein that precipitates in the

17:50:17 16 kidney of the male rat, produces a chronic irritative

17:50:20 17 foci. That is where the tumor is formed. It turns out

17:50:23 18 there is no alpha two microglobulin in female rats, male

17:50:27 19 mice, or female mice, and, thankfully, there is no such

17:50:30 20 analogue in human beings.

17:50:32 21 So a real study, a real animal carcinogen,

17:50:37 22 but its relevance to humans is, I think, held in enormous

17:50:44 23 doubt based on these kinds of studies. So there are lots

17:50:47 24 of things that need to be done that have been done, and

17:50:50 25 that's just one example.

17:50:51 26 Q Are there facts that you are aware of that

17:50:55 27 you've -- let me ask it this way: Are there facts you're

17:50:59 28 aware of that suggest that the A/J mouse model results

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17:51:03 1 should not be extended to humans with respect to the

17:51:06 2 generation of tumors in the lung?

17:51:09 3 MR. McGUIRE: Leading.

17:51:11 4 THE WITNESS: At this time, okay, pending an

17:51:12 5 exposition of some of the questions that we've -- we've

17:51:17 6 just talked about, it would be enormously premature. In

17:51:21 7 fact, in 1985 or 1986, Dr. Witschi was a coauthor with one

17:51:25 8 of his coinvestigators, Dr. Maronpot, who was and still is

17:51:29 9 at the National Institutes of Environmental Health

17:51:33 10 Sciences, where they did an exhaustive examination of

17:51:35 11 animal carcinogenicity in different systems. And they

17:51:38 12 concluded that the A/J mouse was unreliable for the large

17:51:42 13 number of false positives. That was done under what are

17:51:45 14 called the standard kinds of procedures.

17:51:47 15 That's different than what Dr. Witschi has

17:51:49 16 done now with this post exposure where the animals who

17:51:53 17 were overtly toxic, toxic response with the body weight

17:51:58 18 gain, and he takes away the exposure, the body weight gain

17:52:03 19 depression goes away. It comes back to normal. And it's

17:52:06 20 at that point you see this increase in lung tumors. That

17:52:09 21 has to be explained scientifically. There is no

17:52:13 22 scientific explanation at this point that would allow you

17:52:17 23 to say, uh-huh, this is why it happens, this is why it's a

17:52:20 24 good model. And, in fact, this is why it might be

17:52:23 25 relevant to human beings.

17:52:25 26 Putting aside the concentrations of the ETS

17:52:31 27 surrogate that he used in these studies which were

17:52:35 28 stratapheric.

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17:52:38 1 BY MR. STONE:

17:52:38 2 Q Does his beta keratin tests that you

17:52:41 3 described earlier, shed any light one way or the other on

17:52:44 4 whether the A/J mouse is a model for humans with respect

17:52:47 5 to lung tumors?

17:52:50 6 A Well, his prediction to me was if he were to

17:52:53 7 do that study, it would have reflected what the human

17:52:57 8 situation was, and it didn't.

17:52:58 9 Q Okay.

17:53:00 10 VIDEOGRAPHER: Excuse me, Counsel. I need to

17:53:02 11 do a tape change in about five minutes.

17:53:06 12 MR. STONE: Okay. Go ahead. Why don't we

17:53:08 13 just take a break, and you can do it now.

17:53:10 14 VIDEOGRAPHER: This concludes Tape 3 of the

17:53:12 15 deposition, and we are off the record at 5:53.

17:53:15 16 (Discussion off the record.)

17:58:13 17 VIDEOGRAPHER: We are back on the record.  
17:58:17 18 This begins Tape 4 of the deposition of Richard Carchman,  
17:58:21 19 and the time is 5:58.  
17:58:23 20 BY MR. STONE:  
17:58:23 21 Q Dr. Carchman, earlier when I asked you about  
17:58:27 22 Dr. Witschi's experiments, you indicated that you didn't  
17:58:30 23 disbelieve, or you did believe his results and thought  
17:58:33 24 they could be replicated.  
17:58:35 25 What were the results that you were referring  
17:58:37 26 to at that point in time?  
17:58:38 27 A If you take the A/J mouse and expose that  
17:58:46 28 animal in his system, which is a whole body exposure, to a  
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17:58:50 1 tobacco aerosol and the levels he was using, 50 to 80  
17:58:58 2 something milligrams per cubic millimeter, which is the  
17:59:02 3 same as 80 micrograms per liter, and you expose those  
17:59:07 4 animals for several months, then remove the exposure and  
17:59:12 5 then just let them sort of live and work in a  
17:59:18 6 nonaerosol-exposed environment -- and I think these  
17:59:23 7 animals were exposed a number of hours a day for a number  
17:59:29 8 of days for several months -- the animal's body weight  
17:59:34 9 gain depression recovers, and you start to see an increase  
17:59:37 10 in what Dr. Witschi calls multiplicity, which I think is a  
17:59:41 11 reasonable parameter to measure.  
17:59:43 12 And the changes are small. I think they're  
17:59:48 13 real. Though, the difference in the distribution of the  
17:59:55 14 lung tumors between the exposed and the nonexposed animals  
17:59:59 15 are the same, which sort of raises a curious question as  
18:00:03 16 to what might be going on. I would have expected there to  
18:00:07 17 be a difference in the distribution of the kinds of tumors  
18:00:12 18 that Dr. Witschi saw. But we'll -- somebody will  
18:00:14 19 eventually figure out what's going on there.  
18:00:17 20 So he saw an increase in lung tumors. It was  
18:00:25 21 somewhat dose related. Curiously enough, when he first  
18:00:29 22 started publishing this -- this work, he started out  
18:00:34 23 around three or four mics per liter or three or four  
18:00:38 24 milligrams per cubic milliliter. And he didn't see -- he  
18:00:43 25 didn't see anything until he changed to this post  
18:00:45 26 exposure.  
18:00:46 27 It would be important if not essential to  
18:00:51 28 then go back and do the whole study from the three level  
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18:00:54 1 up to the 89 or 90 level exactly as he did it with the  
18:00:59 2 post exposure and really get an understanding of the  
18:01:03 3 nature of the dose -- dose-response curve.  
18:01:06 4 And the reason I say this has to do with the  
18:01:11 5 question whether it's a linear dose response curve or  
18:01:13 6 whether it looks like a hockey stick. These kinds of  
18:01:16 7 questions have enormous implications both in terms of  
18:01:19 8 understanding the biology and then also in terms of risk  
18:01:22 9 assessment, because, as I said yesterday to a question  
18:01:28 10 from Mr. McGuire regarding how EPA extrapolated linearly  
18:01:32 11 from active smoking to ETS, again, if Dr. Witschi's model  
18:01:38 12 is correct in terms of representing what might be going on  
18:01:40 13 in human beings, then there should be a linear dose  
18:01:43 14 response curve.  
18:01:44 15 If it's not linear, it has enormous  
18:01:48 16 implications in terms of the validity of the EPA  
18:01:51 17 underlying assumption with regard to environmental tobacco  
18:01:54 18 smoke.  
18:01:55 19 So there are some very, very important  
18:02:00 20 consequences to understanding what's going on with regard  
18:02:02 21 to ETS, and for us, there's another important consequence

18:02:05 22 in terms of being able to use this model if it makes sense  
18:02:09 23 in our product development.

18:02:09 24 Q Do Dr. Witschi's results that you've  
18:02:12 25 described lead you to conclude that what Mr. McGuire has  
18:02:17 26 called environmentally relevant levels of ETS cause lung  
18:02:22 27 cancer in humans?

18:02:25 28 A I don't see how, in the absence of that,  
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18:02:29 1 answering the questions that I've raised, how one can  
18:02:32 2 make -- how one can make that -- how one can make that  
18:02:35 3 statement, as a scientist.

18:02:36 4 Q Mr. McGuire asked you about various  
18:02:38 5 epidemiological studies related to ETS.

18:02:41 6 Are you aware of any of those studies that he  
18:02:44 7 asked you about in which they show a strong association  
18:02:49 8 between ETS and any health endpoint, using the definition  
18:02:53 9 you gave in strong a few minutes ago.

18:02:58 10 A In fact, in the report that Mr. McGuire gave  
18:03:00 11 me in -- I believe from the Geneva -- Geneva meeting, with  
18:03:04 12 regard to SIDS, they had a relative risk of 5.  
18:03:11 13 Unfortunately, reading further in the paper -- and this is  
18:03:15 14 a point that I happen to agree with, as does Dr. Sanders  
18:03:20 15 and Dr. Demsey, from our review of the literature -- they  
18:03:23 16 could not tweeze out what the role of ETS was. It was  
18:03:28 17 clear in their minds that the association was there with  
18:03:30 18 regard to maternal smoking during pregnancy.

18:03:33 19 And they actually, I think, recommended  
18:03:36 20 additional work be done to try to under -- to understand  
18:03:40 21 that, as they did for a number of -- a number of other  
18:03:43 22 factors.

18:03:44 23 So SIDS, I believe, had the highest relative  
18:03:47 24 risk. It was, I believe, 5. But I believe they could --  
18:03:52 25 could not clearly separate maternal-fetal from neonate to  
18:04:01 26 young child.

18:04:03 27 Q And you're referring to the consultation  
18:04:06 28 report, Exhibit 4018?

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18:04:08 1 A Yes, sir.

18:04:09 2 Q Other than that one study that you  
18:04:13 3 mentioned, involving SIDS and maternal smoking and/or  
18:04:18 4 other exposures, are you aware of any other  
18:04:20 5 epidemiological studies or of any epidemiological studies  
18:04:25 6 involving ETS that have a risk association of -- that you  
18:04:29 7 would describe as strong?

18:04:30 8 A Not that I'm aware of.

18:04:32 9 Q Okay. Mr. McGuire asked you quite a few  
18:04:39 10 questions about scientific controversy. Let me ask you a  
18:04:41 11 few questions about scientific consensus, if I might.

18:04:44 12 Is that a term that has meaning to you?

18:04:46 13 A No.

18:04:47 14 Q Can I give you a definition of scientific  
18:04:51 15 consensus and see if you can apply it to what you do know?

18:04:55 16 A Okay.

18:04:56 17 Q Is there -- consider scientific consensus, if  
18:05:03 18 you will, for purposes of this -- these questions to be a  
18:05:06 19 situation in which there is no right-hand or legitimate  
18:05:11 20 scientific disagreement. In other words, among  
18:05:15 21 scientists, there's no reasoned or principal basis for  
18:05:21 22 disagreement that's been expressed.

18:05:23 23 With that definition, does that have meaning  
18:05:25 24 to you?

18:05:25 25 A It may. It's nothing that would get me very  
18:05:30 26 excited.



18:05:30 27 Q Let me ask it this way, then: How would you,  
18:05:33 28 based on your experience, describe the scientific state of  
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18:05:37 1 opinion amongst various scientists with respect to health  
18:05:40 2 effects of ETS today?  
18:05:45 3 A Among scientists?  
18:05:47 4 Q Among scientists.  
18:05:48 5 A I think it runs the full gamut from believing  
18:05:51 6 or being convinced that the data indeed is compelling, to  
18:05:54 7 representing it as being unsure or marginal.  
18:06:00 8 Q In your experience, have you encountered any  
18:06:06 9 instances where -- let me strike that.  
18:06:09 10 Are there any scientists today who you have  
18:06:16 11 seen in the published peer-reviewed literature that have  
18:06:20 12 questioned whether ETS is a cause of lung cancer in  
18:06:25 13 humans?  
18:06:27 14 A Yes.  
18:06:27 15 Q Have you seen that in publications by  
18:06:30 16 scientists who are not employed by or funded by Philip  
18:06:34 17 Morris or any other entities related to the tobacco  
18:06:37 18 industry?  
18:06:38 19 A As far as I know, yes.  
18:06:39 20 Q Can you give us an example of one of the more  
18:06:44 21 recent instances of that that you've seen?  
18:06:47 22 A Last month, May 15th issue, the American  
18:06:50 23 Journal of Epidemiology, the first -- the first article by  
18:06:54 24 Dr. Sam Shapiro from Boston had, as part of his discussion  
18:07:00 25 of low risk epidemiology, a number of examples. And one  
18:07:04 26 of those examples was ETS and lung cancer. There were  
18:07:10 27 several, but that was -- that was one.  
18:07:12 28 And he basically concluded, looking at the  
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18:07:16 1 partial -- he didn't even look at all of the things one  
18:07:19 2 needs to take into account -- that from his perspective,  
18:07:23 3 he could not make a causal inference with those kinds of  
18:07:27 4 numbers, given the uncertainties that still remained in  
18:07:30 5 terms of evaluating this from an epidemiological  
18:07:34 6 perspective.  
18:07:35 7 And he went further to talk about pseudo  
18:07:39 8 science and policy and policy driving science rather than  
18:07:46 9 science driving policy.  
18:07:47 10 MR. STONE: Okay. In the interest of time,  
18:07:52 11 Dr. Carchman, I'm going to conclude my examination at this  
18:07:54 12 time so any other counsel who still have questions can  
18:07:58 13 complete theirs. Thank you very much.  
18:07:59 14 THE WITNESS: Thank you.  
18:08:05 15 MR. MILES: If I have any questions, I'll  
18:08:08 16 wait in the event that he has to come back. If he has to  
18:08:13 17 come back, I might have questions. But it's after 6  
18:08:16 18 o'clock at night on a Friday.  
18:08:17 19 MR. McGUIRE: Anybody else have questions?  
18:08:21 20 MR. RICHARDSON: I do not at the present  
18:08:22 21 time.  
18:08:25 22  
18:08:25 23 FURTHER EXAMINATION  
18:08:25 24 BY MR. McGUIRE:  
18:08:25 25 Q Okay. The IARC policy that you said weighs  
18:08:34 26 more heavily toward the use of the Wistar rat as opposed  
18:08:39 27 to the A/J mice, where is that published?  
18:08:43 28 A First of all, by analogy, it was low  
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18:08:49 1 spontaneous to high spontaneous where Wistar is an example  
18:08:53 2 of a low spontaneous and the A/J is an example of a high

18:08:57 3 spontaneous.  
18:08:57 4 Q So if you don't want to see tumors, you use  
18:09:01 5 the rat. If you want to see tumors, you use the mouse?  
18:09:04 6 MR. STONE: Objection; argumentative.  
18:09:05 7 THE WITNESS: Actually, that's another one of  
18:09:07 8 your important -- important questions. That's been --  
18:09:09 9 that has been significantly debated. The source of this  
18:09:12 10 IARC information is within their monograph volumes where  
18:09:19 11 they talk about assays, specific biological assays and  
18:09:25 12 their use in carcinogenicity testing. And I think it just  
18:09:29 13 takes -- I can't tell you which volume it is in. But it's  
18:09:31 14 in -- in the IARC monograph series.  
18:09:35 15 And it is felt to be a reasonable  
18:09:39 16 interpretation of what to do, because the -- your point is  
18:09:46 17 really quite important. It's been debated for years. The  
18:09:51 18 issue is with a high spontaneous background, are you  
18:09:54 19 looking at the kind of cancer you see in people, or are  
18:09:59 20 you looking at something else? You may have -- what you  
18:10:04 21 could be saying with an increase in a high spontaneous  
18:10:08 22 background is something that could be totally nutritional  
18:10:11 23 or hormonal or stress related, which, though it may be  
18:10:16 24 applicable in certain kinds of cancers in people, the  
18:10:18 25 feeling is it's clearly not applicable in the vast  
18:10:21 26 majority of cancers that people -- that people get.  
18:10:24 27 I'm not saying it's irrelevant and neither is  
18:10:27 28 IARC. It's just the relative weight that you consider  
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18:10:30 1 these things.  
18:10:30 2 BY MR. McGUIRE:  
18:10:30 3 Q How long a history is there -- how much  
18:10:36 4 literature is there on the spontaneity -- the tumor  
18:10:44 5 spontaneity of the Wistar rat?  
18:10:47 6 A Quite a bit. It goes back decades.  
18:10:50 7 Q Does it go back as far as the 'A' strain  
18:10:53 8 mice?  
18:10:53 9 A The Strain A?  
18:10:54 10 Q Yes.  
18:10:55 11 A I don't know.  
18:10:56 12 Q Is there as much work as the Strain A mice?  
18:10:59 13 A I would say the Strain A mouse had reached  
18:11:04 14 its peak in terms of use, by investigators many years  
18:11:09 15 ago. Now there are only a few laboratories that still use  
18:11:13 16 it. The Wistar rat remains an animal of use. Though, it  
18:11:19 17 is not the standard NTP rat, but neither is the Strain A  
18:11:26 18 mouse.  
18:11:26 19 Q What difference does it make as to whether  
18:11:31 20 the 'A' strain mice or mouse has a high spontaneous rate  
18:11:37 21 of tumor genicity, as long as you have a control?  
18:11:41 22 A But he doesn't have a control. That was one  
18:11:44 23 of my points.  
18:11:45 24 Q He doesn't have a control group?  
18:11:46 25 A He doesn't have a control for his  
18:11:49 26 experimental changes.  
18:11:50 27 Q In terms of what? He doesn't have a group of  
18:11:54 28 mice that were exposed only to air?  
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18:11:58 1 A That is a control. The point and in our  
18:12:04 2 discussions, I think -- he had recognized this before I  
18:12:06 3 had any conversations with him -- that the body weight  
18:12:10 4 gain depression associated with -- with tobacco smoke  
18:12:14 5 followed by the removal of the exposure and the return of  
18:12:17 6 the body weight gain had to be controlled for. And since  
18:12:21 7 the control group did not demonstrate a body weight gain

18:12:25 8 depression, the role of body weight gain depression is not  
18:12:29 9 controlled for. And that is one of the controls he's  
18:12:32 10 missing. And it could very well be the most important  
18:12:34 11 control group.

18:12:35 12 Q Did you read Dr. Witschi's depositions?  
18:12:42 13 A Depositions?  
18:12:43 14 Q Yes. In this case.  
18:12:45 15 A I read an affidavit.  
18:12:47 16 Q He was deposed, and he explained what  
18:12:52 17 controls he had and whether or not he believed that these  
18:12:58 18 experiments that he performed were meaningful with respect  
18:13:02 19 to the cause of lung tumor multiplicity in the experiments.  
18:13:08 20 You have not read that deposition  
18:13:10 21 transcript?  
18:13:11 22 MR. STONE: I object to counsel's summary of  
18:13:13 23 the deposition. It misstates the facts.  
18:13:16 24 But you can ask him about whether he's read  
18:13:19 25 the transcript.  
18:13:19 26 THE WITNESS: I have not read his deposition,  
18:13:21 27 no.  
18:13:21 28 BY MR. McGUIRE:  
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18:13:21 1 Q Okay. Does Dr. Witschi contend -- or has he  
18:13:27 2 advised you that he does not think that the nose-only  
18:13:32 3 application of ETS is valid?  
18:13:35 4 A No.  
18:13:40 5 Q Have you told -- other than what you've told  
18:13:42 6 us on the record here, are there any other discussions  
18:13:44 7 that you've had with Dr. Witschi that relate to his  
18:13:47 8 experiments with the A/J mice?  
18:13:49 9 A I don't think so. Oh. Excuse me. When we  
18:13:57 10 were together at INBIFO, I think we basically tried to see  
18:14:04 11 if we could engage him, at least intellectually, as we  
18:14:09 12 started to move through his test model, if we could, if he  
18:14:13 13 would mind if we shared information with him and asked him  
18:14:15 14 for input. And my recollection was that he did not object  
18:14:18 15 to that.  
18:14:19 16 Q And is Dr. Witschi currently involved in  
18:14:22 17 studies at -- or experiments at lower levels of exposure,  
18:14:29 18 lower levels of concentration?  
18:14:32 19 A Of?  
18:14:32 20 Q ETS.  
18:14:33 21 A Not that I'm aware of.  
18:14:35 22 MR. McGUIRE: That's all I have.  
18:14:44 23 MR. STONE: Okay. Just before we go off the  
18:14:47 24 record, what would you propose we do with 4035,  
18:14:50 25 Mr. McGuire? I will -- if you want to --  
18:14:54 26 MR. McGUIRE: I propose that we bring this up  
18:14:57 27 to the court.  
18:14:57 28 MR. STONE: I don't mind that. Just my only  
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18:15:00 1 question was what to do about it -- we can go off the  
18:15:04 2 video, if you want. Do you care? Do you want to save the  
18:15:07 3 video?  
18:15:07 4 MR. McGUIRE: We can go off the video and off  
18:15:10 5 the record.  
18:15:10 6 MR. STONE: I just want to get an agreement.  
18:15:12 7 We can go off the video.  
18:15:14 8 VIDEOGRAPHER: We are off the video. This  
18:15:16 9 concludes the video portion of the deposition. The time  
18:15:21 10 is 6:15.  
18:15:23 11 (Discussion off the record.)  
18:15:30 12 MR. McGUIRE: I suggest we stipulate that the

18:18:58 13 original of the deposition be sent to the attorney  
18:19:02 14 defending the witness, who, in this case, is Mr. Stone,  
18:19:06 15 that that attorney be charged with the responsibility of  
18:19:09 16 advising the witness that the transcript has been prepared  
18:19:13 17 and that he has 30 days to correct the transcript and  
18:19:15 18 return it to that attorney's office.  
18:19:17 19 That attorney then will be charged with the  
18:19:20 20 responsibility of advising all counsel of any changes made  
18:19:23 21 to the deposition. The transcript may be used as signed.  
18:19:26 22 If not signed, the reporter is relieved of all  
18:19:28 23 responsibilities under the Code of Civil Procedure. The  
18:19:30 24 confidential portions of the deposition will be -- will  
18:19:33 25 remain intact with the rest of the volume. However, the  
18:19:37 26 front of the volume will indicate that portions of the  
18:19:40 27 deposition are confidential and are given subject to a  
18:19:44 28 protective order governing the use and dissemination of  
Vail, Christians & Associates (619)544-8344 445  
18:19:47 1 certain information and documents and materials produced  
18:19:49 2 by certain defendants in the tobacco cases, Roman II. And  
18:19:55 3 the confidential exhibits will be separately bound and  
18:19:58 4 identified as being confidential.  
18:20:01 5 That copies of the transcript may be used in  
18:20:03 6 lieu of an original for any purpose, and that the original  
18:20:07 7 and any copies can be used as though signed, if not signed  
18:20:13 8 within the 30-day time period.  
18:20:15 9 MR. STONE: I add only I'll maintain the  
18:20:16 10 original and make it available upon request at the time of  
18:20:19 11 trial or in connection with any pretrial proceedings.  
18:20:23 12 MR. McGUIRE: I'll add to that, that all the  
18:20:25 13 originals -- I don't know what Judge Prager's request is,  
18:20:28 14 but, in fact, if he wants to have originals for his use at  
18:20:32 15 the time of trial, all counsel will be bound, whoever  
18:20:35 16 receives them, to make them available at that time.  
18:20:37 17 And then the last thing is -- oh. I don't  
18:20:40 18 know if I said this, but it's going to be signed under the  
18:20:43 19 penalty of perjury.  
18:20:43 20 MR. STONE: Great. That's acceptable.  
18:20:45 21 With respect to Exhibit 4035, what I propose  
18:20:51 22 is that Mr. McGuire's copy which contains notations or  
18:20:56 23 markings or his work product will be sealed in a separate  
18:21:00 24 envelope, sealed, to be signed by him. I'll collect the  
18:21:03 25 remainder of the copies of Exhibit 4035. I'll maintain  
18:21:07 26 both the envelope, the sealed envelope with Mr. McGuire's  
18:21:10 27 copies and the other copies in another sealed envelope in  
18:21:13 28 a room which complies with the provisions of the  
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18:21:15 1 protective order and will be governed by any rulings by  
18:21:19 2 the court with respect to those documents.  
18:21:21 3 And we'll commit to Mr. McGuire that neither  
18:21:23 4 myself or anybody in my office will at any time undertake  
18:21:26 5 or make any effort to open the envelope that contains  
18:21:29 6 Mr. McGuire's copy.  
18:21:31 7 MR. McGUIRE: Okay. I would ask -- that's  
18:21:33 8 agreeable with me.  
18:21:33 9 There's one other request I'd like to make.  
18:21:37 10 And that is this document, Exhibit 4035, is apparently  
18:21:42 11 identified as being highly confidential information  
18:21:44 12 produced by Philip Morris subject to court order in Philip  
18:21:48 13 Morris versus ABC. I have no idea what case that is. I  
18:21:51 14 have no idea whether the highly confidential nature of  
18:21:54 15 this document applies in this case, whether the same  
18:21:58 16 protective order in that case applies to this case.  
18:22:01 17 And, therefore, and out of an abundance of

18:22:04 18 caution and not wanting to tread on the court's authority  
18:22:10 19 to manage this case, I am, based on representations made  
18:22:14 20 to me by Mr. Stone that this is a highly confidential  
18:22:17 21 document, conceding to his requests. However, I do  
18:22:21 22 request that he advise me within a week, if that's enough  
18:22:24 23 time, or whatever he thinks is a reasonable period of  
18:22:26 24 time, as to whether or not he or anyone else in this  
18:22:30 25 proceeding are still claiming this to be highly  
18:22:32 26 confidential or if only portions of the document are  
18:22:35 27 highly confidential, to provide me with a redacted version  
18:22:40 28 of it that eliminates any highly confidential information  
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18:22:42 1 and keep available my copy in case I want to challenge,  
18:22:46 2 pursuant to the procedures outlined in the protective  
18:22:50 3 order, his designation of the information as being highly  
18:22:54 4 confidential information, as that term is defined in the  
18:22:58 5 protective order.  
18:22:59 6 MR. STONE: Okay. I just -- in response, I  
18:23:03 7 did not independently review this document prior to  
18:23:06 8 receiving it today. And what I observed from what I saw  
18:23:09 9 today is that it has previously been designated highly  
18:23:12 10 confidential. And I think we're required under the  
18:23:14 11 protective order to comply with that designation.  
18:23:16 12 I will undertake a review of the document to  
18:23:18 13 determine if there are any portions or the entirety of the  
18:23:23 14 document for which we no longer claim that protection.  
18:23:26 15 I'll notify you of any changes in our position. I'd like  
18:23:29 16 to have two weeks in which to do it, if I can. But I will  
18:23:32 17 undertake to do it within that period of time.  
18:23:34 18 And I will maintain your copy, as I said,  
18:23:37 19 until either the court instructs me to give it back to you  
18:23:39 20 or the case ends and we figure out what else to do with it  
18:23:42 21 at that point in time. I will not, in any event, look at  
18:23:45 22 your work product.  
18:23:45 23 MR. McGUIRE: That's fine.  
18:23:47 24 MR. STONE: Okay. Off the record. Thank  
18:23:49 25 you.  
18:23:49 26 (Whereupon, at 6:23 p.m. the proceedings were  
18:23:49 27 adjourned.)  
18:23:49 28 \* \* \* \* \*  
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18:23:49 1 I hereby declare under penalty of perjury that  
18:23:49 2 the foregoing is my deposition under oath; that these are  
18:23:49 3 the questions asked of me and my answers thereto; that I  
18:23:49 4 have read my deposition and have made the necessary  
18:23:49 5 corrections, additions or changes to my answers that I  
18:23:49 6 deem necessary.  
18:23:49 7 In witness thereof, I hereby subscribe my name,  
18:23:49 8 this \_\_\_\_\_ day of \_\_\_\_\_ 2000.  
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Richard Carchman, Ph.D.

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18:23:49 1 STATE OF CALIFORNIA )  
18:23:49 2 : SS.  
18:23:49 3 COUNTY OF SAN DIEGO )

18:23:49 4  
18:23:49 5 I, Margaret A. Smith, CSR No. 9733, hereby certify  
18:23:49 6 that I reported in shorthand the above proceedings on  
18:23:49 7 Friday, June 2, 2000, at 550 West C Street, Suite 1440, in  
18:23:49 8 the City of San Diego, County of San Diego, State of  
18:23:49 9 California; and I do further certify that the above and  
18:23:49 10 foregoing pages, numbered from 203 to 449, inclusive,  
18:23:49 11 contain a true and correct transcript of all said  
18:23:49 12 proceedings.

18:23:49 13 It was stipulated that the original deposition be  
18:23:49 14 delivered to Mr. Stone, for the purpose of having the  
18:23:49 15 witness read, correct and sign his deposition under  
18:23:49 16 penalty of perjury; said original thereafter to be  
18:23:49 17 maintained by Mr. Stone until the time of trial.

18:23:49 18 DATED: JUNE 14, 2000.

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MARGARET A. SMITH  
CSR NO. 9733

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